United States Court of Appeals

for the Second Circuit

JOINT APPENDIX

ORIGINAL

76-4260

United States Court of Appeals

FOR THE SECOND CIRCUIT

BAGEL BAKERS COUNCIL OF GREATER NEW YORK, BAGEL BOX, INC., BAGEL TOWN, INC., BENSON BAGEL BAKERY, INC., CULVER BAGEL BAKERY, INC., FAR ROCKAWAY BAGEL BAKERY, INC., GOLDEN BAGEL BAKERY, INC., ISLAND PARK NASSAU BAGEL BAKERY, INC., NELSON BAGEL BAKERY, INC., NEPTUNE BRIGHTON BAGELS, INC., RUBINSTEIN BAGELS, INC., RUBINSTEIN BAGELS, INC., TRIBORO BAGEL CO. INC., D & H BAGEL BAKERY, INC., and POP'S BAGEL BAKERY, INC.,

Petitioners,

—against—

NATIONAL LABOR RELATIONS BOARD,

Respondent.

NATIONAL LABOR RELATIONS BOARD,

Petitioner,

—v.—

FLATLANDS BAGEL BAKERY, INC., LAURELTON BAGEL BAKERY, GOLDEN BAGEL CORP., NEPTUNE BAGEL BAKERS, INC., and JOSEPH RUBINSTEIN, MORRIS RUBINSTEIN, and HERMAN REITER, d/b/a RUBINSTEIN BAGELS,

Respondents.

ON PETITION FOR REVIEW AND CROSS-APPLICATION FOR ENFORCEMENT OF A SUPPLEMENTAL ORDER OF THE NATIONAL LABOR RELATIONS BOARD

JOINT SUPPLEMENTAL APPENDIX

JOHN C. TRUESDALE
Executive Secretary
National Labor Relations Board

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UNITED STATES COURT OF APPEALS
FILED
FEB 24 1977
SECOND CIRCUIT

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Chronological List of Relevant Docket Entries . . . . .As

Appendix to Supplemental Decision of James L. Rose, Administrative Law Judge As-1

Excerpts from Transcript of Testimony 1s

As

CHRONOLOGICAL LIST OF RELEVANT DOCKET ENTRIES

In the Matter of: Bagel Bakers Council of Greater New York & its Employer-Members

Case No.: 29-CA-887-1

6.24.76	Backpay Specification and Notice of Hearing, dated
6.30.76	Answer and Notice of Motion of Petitioner Neptune Bagel Bakers Inc., dated
7. 2.76	Order rescheduling hearing and extending time to answer, dated
7.14.76	Answer of Petitioner Bagel Bakers Council of Greater New York, et al., dated
7.14.76	Notice of Motion of Petitioner Pops Bagel Bakery, Inc., dated
7.14.76	Notice of Motion of Petitioner Neptune-Brighton Bagels, Inc., dated
7.19.76	Hearing opened
8. 5.76	Amendment to Backpay Specification, dated
8. 5.76	Notice of Motion of Petitioners, dated
8.10.76	Answer to Amendment to Backpay Specification, dated
8.11.76	Hearing closed
9.10.76	Board's Notice to the Parties, dated
9.10.76	Administrative Law Judge's Supplemental Decision issued
9.27.76	Flatlands Bagel Bakery's exceptions to the Administrative Law Judge's Supplemental Decision, received
10. 4.76	General Counsel's exceptions to the Administrative Law Judge's Supplemental Decision, received
10. 4.76	Petitioners' exceptions to the Administrative Law Judge's Supplemental Decision, received
10. 4.76	Petitioners' request for oral argument, received
10.28.76	Board's Supplemental Decision and Order, dated

Appendix 46

1967 Sales of Respondents

Bagel Box, Inc.		(no records offered)
Bagel Town, Inc.	110,691	(July 1, 1966 to June 30, 1967)
	87,976	(July 1, 1967 to June 30, 1968)
	98,884 avg.	
Benson Bagel Bakery, Inc.	67,998	(1967)
Culver Bagel Bakery, Inc.	147,196	(1967)
Far Rockaway Bagel Bakery, Inc.	143,094	(April 1, 1966 to March 31, 1967)
	51,695	(April 1, 1967 to March 31, 1968)
	97,395 avg.	
Flatlands Bagel Bakery, Inc.		(no records offered)
Golden Bagel Corp.	98,682	(Sept. 1, 1966 to August 31, 1967)
Island Park Nassau Bagel Bakery Inc.	202,850	(June 1, 1966 to May 31, 1967)
Laurelton Bagel Bakery		(no records offered)
Neptune - Brighton Bagels, Inc.	49,953	(4 months in 1967 to December 31, 1967)
Nelson Bagel Bakery, Inc.		(no records offered)
Rubinstein Bagels, Inc.	181,401	(Feb. 1, 1967 to Jan. 31, 1968)
Tri-Boro Bagel Co., Inc.	228,642	(Feb. 1, 1967 to Jan. 31, 1968)
D & H Bagel Bakery, Inc.	37,561	(Nov. 1, 1966 to Oct. 31, 1967)
Pop's Bagel Bakery Inc.	104,537	(Jan 1, 1967 to Dec. 31, 1967)

Appendix 47

Limit to Backpay Liability of Each Respondent
1967 Sales X $1/$.07 X 56 = Bagel payroll = Limit of Liability

	1967 Sales	Limit of Backpay Liability		Total Backpay Owed
Bagel Box, Inc.	_____	_____		$ 3,604
Bagel Town, Inc.	$98,884 (avg.)	$22,225	greater than	11,621
Benson Bagel Bakery, Inc.	67,998	17,346	greater than	4,351
Culver Bagel Bakery, Inc.	147,196	37,550	greater than	6,944
Far Rockaway Bagel Bakery, Inc.	97,395 (avg.)	24,846	greater than	15,004
Flatlands Bagel Bakery, Inc.	_____	_____		3,041
Golden Bagel Corp.	98,682	25,174	greater than	21,241
Island Park Nassau Bagel Bakery, Inc.	202,850	51,747	greater than	17,143
Laurelton Bagel Bakery	_____	_____		16,092
Nelson Bagel Bakery, Inc.	_____	_____		52
Neptune-Brighton Bagels, Inc.	49,953	12,743	greater than	6,068
Rubinstein Bagels, Inc.	181,401	46,276	greater than	7,082
Tri-Boro Bagel Co., Inc.	288,642	73,633	greater than	18,454
D & H Bagel Bakery, Inc.	37,561	9,595	less than	17,135
Pop's Bagel Bakery, Inc.	104,537	26,668	greater than	13,318

Appendix 48

Adjustment of backpay due from Pop's Bagel Bakery, Inc., as successor to D & H Bagel Bakery, Inc., on the D & H Bagel Bakery, Inc., limit of liability.

The liability is 56 percent of the backpay found due, thus each claimants' backpay will be adjusted accordingly:

Murray Boykin	$7,308	to	$4,092
Murray Fertel	33	to	18
Joseph G. Fleischman (deceased)	32	to	18
Eugene Moore	2,365	to	1,324
Seymour Ostrotsky	227	to	127
Samuel Provder	2,460	to	1,378
Gerardo F. Russo	19	to	11
Emanuel Strugatch	1,193	to	668
Markus Weisz	3,430	to	1,921
Jack Sugarman	49	to	27
Israel Weiner	19	to	11
			$9,595

BEFORE THE NATIONAL LABOR RELATIONS BOARD

29th Region

In the Matter of:	:	
BAGEL BAKERS COUNCIL OF GREATER NEW YORK AND ITS EMPLOYER-MEMBERS	:	
and	:	Docket No. 29-CA-887-1
BAGEL BAKERS UNION LOCAL 338 OF THE BAKERY AND CONFECTIONERY WORKERS INTERNATIONAL UNION OF AMERICA	:	

16 Court Street,
Brooklyn, New York
Monday, July 19, 1976

The above-entitled matter came on for hearing, pursuant to notice, at 11:45 o'clock, a.m.

BEFORE:

JAMES L. ROSE, Administrative Law Judge

APPEARANCES:

STEPHEN E. APPELL, Esq.	Brooklyn, New York, appearing on behalf of the Counsel for the General Counsel.
MYRON W. SISKIN, P.C. and PHILIP LEVINE, Esq.	855 Avenue of the Americas, New York, New York 16 Court Street, Brooklyn, New York, appearing on behalf of Respondents except Flatlands Bagel Bakery, Inc., Laurelton Bagel Bakery, Inc. and Neptune Bagels, Inc.

APPEARANCES (Continued):

STANLEY BRYER, Esq. and DAVID KRAMER, Esq.	200 East 42nd Street, New York, New York. Law firm of Friedlander, Gaines, Cohen, Rosenthal and Rosenberg, 1140 Avenue of the Americas, New York, New York, appearing on behalf of Oscar Stern.
HARRIET LEWIS	8101 Flatlands Avenue, Brooklyn, New York 11236, Secretary-Treasurer, Flatlands Bagel Bakery, Inc.

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P R O C E E D I N G S

JUDGE ROSE: The hearing will be in order.

This is a formal hearing before the National Labor Relations Board in the matter of Bagel Bakers Council of Greater New York and its Employer Members, Case No. 29-CA-887-1 on the back pay specification and notice of hearing.

The administrative law judge conducting this hearing is James L. Rose.

Would counsel please state their appearances for the record?

MR. APPELL: Stephen E. Appell, NLRB Region 29, 16 Court Street, New York.

MR. SISKIN: For the Bagel Bakers Council of Greater New York and its Employer Members Myron W. Siskin, 855 Avenue of the Americas, New York City and Philip Levine, co-counsel, 16 Court Street, Brooklyn, New York.

MR. KRAMER: Your Honor, on behalf of Mr. Oscar Stern, formerly the president of the now defunct Neptune Bagel Bakers Inc., Stanley Bryer, 200 East 42nd Street, New York, New York and Friedlander, Gaines, Cohen, Rosenthal & Rosenberg by David Kramer, 1140 Avenue of the Americas, New York, New York 10036.

JUDGE ROSE: Are there any other appearances?

Very well.

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instead of what is on the record now as Culver Bagel Bakery.

Collectively for all those four respondents we represent to the court and to opposing counsel that they were the names ab initio, from the inception of this proceeding, and from the inception of the litigation.

JUDGE ROSE: All right.

Mr. Appell, do you have any objections to correcting the formal papers reflecting these change of names?

MR. APPELL: No, your Honor, subject only to my withdrawing from the stipulation or the amendment of the papers at such time as I may find out that the information provided me is not correct.

JUDGE ROSE: All right, very well. The formal papers will be amended to reflect the correct names.

Are there any other preliminary matters?

MR. SISKIN: Your Honor, I believe these motions that are before the court now --

JUDGE ROSE: What are the motions?

MR. SISKIN: We represent Brighton Bagels and Pops Bagel Bakery Inc.

As to those two respondents, we have made motions attacking the presence of those defendants as named respondents for purposes of liability on the grounds, as we contend, that there is no transferee liability.

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With respect to Pops Bagel Bakery it is our contention that Pop's Bagel Bakery was not liable to pay any back pay award that may be allocated to D and N Bagel Bakery.

With respect to Neptune, Brighton, it is our contention that Neptune, Brighton Bagels Inc. did not succeed to the business of Neptune Bagel Bakers Inc.

Those motions are before the court. I will give copies of them if you don't already have them.

JUDGE ROSE: I don't have them.

MR. SISKIN: Thank you, your Honor.

JUDGE ROSE: Any objection to these motions?

MR. APPELL: Yes, there is, your Honor, for both.

JUDGE ROSE: Mr. Appell?

MR. APPELL: Yes. I object to both.

JUDGE ROSE: What is the basis?

MR. APPELL: Well, with respect to Pop's Bagel Bakery, that has been already found in the board's decision and ordered so I think it has been litigated as to the liability of Pop's, and with respect to Neptune, Brighton, the available information would indicate to the general counsel that Neptune Brighton Bagels is a successor to the former Neptune Bagel Bakers, and therefore we would object.

We think that should be litigated in this hearing.

[8]

JUDGE ROSE: Was that in the earlier hearing?

MR. APPELL: No, it was not. I think it should be litigated in this hearing.

JUDGE ROSE: Is there any reason why it shouldn't be?

MR. APPELL: Why it should not be litigated?

JUDGE ROSE: Yes.

MR. APPELL: I don't know, I think it is a pertinent --

JUDGE ROSE: I thought you said it should not be.

MR. APPELL: I said it should be litigated.

MR. SISKIN: Of course I take a contrary position, your Honor. To litigate this issue to the entire proceedings would subject my client to a mass of extra cost that would not be the occasion if the court would rule on this now.

JUDGE ROSE: I can't grant your motion without some evidence to support it, can I, Mr. Siskin?

MR. SISKIN: Well, for the purpose of motion, your Honor, I am prepared to have my man testify for that limited issue now, your Honor, with respect to what did transpire.

There is no evidence in the record and I don't think opposing counsel can point to it which would indicate to the court either situation being correct or not correct.

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The only way we can cover this issue now is to put the principal of that company that is involved now making the motion before your Honor and let him testify as to the transferee, transferor possible status and as to what did transpire when he took over the operations.

It is our contention that under the law and the facts he is not a transferee for purposes of transfer of liability and we will put the man on now.

I believe he is here now.

MR. APPELL: I would object, your Honor.

I think there is a proper time and place for evidence and I think we should proceed with the preliminary aspects of this hearing at this time.

JUDGE ROSE: Right. I think that question is a proper one to take evidence on but I think this is not the proper time to take the evidence so I am going to hold your motion in abeyance until we get some evidence on it.

MR. SISKIN: Thank you.

JUDGE ROSE: Any further motions?

MR. KRAMER: Yes, your Honor, I intended only to come here for the limited purpose of entering an appearance on behalf of the former president, Mr. Oscar Stern of Neptune Bagel Bakers Inc.

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I am rather surprised to find that the successor, Neptune, Brighton Bagels Inc. is now making a motion that it has no liability and did not assume any obligation for unfair practices allegedly committed and I believe found by the board and affirmed by the Second Circuit, so I find my position is not one just to make a motion which I had intended to do of simply requesting the administrative law judge, based on evidence which I intend to produce, to delete the name of the respondent Neptune Bagel Bakers Inc., since it is no longer a corporate entity.

There is no such corporation in the State of New York and none of the corporate officers who retired by the way were ever named by respondents so there is no individual liability.

I find myself, however, in a more difficult position since, instead of simply requesting "I want out", hearing that the successor says "Oh no, it is not our liability, it is our predecessor's", which makes it an entirely different ball game.

If we are going to litigate the question of successorship which I think has been decided by the United States Supreme Court a few years ago in Golden State Beverages and there is absolutely no question about it, then I am going to be herea lot longer than I

anticipated. [11]

But in an effort to limit my motion I am going to ask the following documents be marked in evidence.

JUDGE ROSE: Mr. Kramer, you want to get into the question of the successorship situation at this point?

MR. KRAMER: I want to show that in fact Footnote 1 set forth in the back pay specification, that there was a successor truly and at this point in opposition to the motion made by Neptune, Brighton, there be no liability for Neptune Brighton and only liability for Neptune Bagel Bakers.

JUDGE ROSE: Well, isn't this a different issue?

MR. KRAMER: That issue was just raised. I am surprised it was raised but I didn't come here for this purpose.

I came here simply to put in evidence the two documents which I would request be marked.

One is a contract for the sale of the business and the other is a bill of sale between Neptune Bagel Bakers Inc. and Neptune, Brighton Bagels Inc., the first dated April 20, 1967, the second dated April 26, 1967.

I am fully prepared to represent that not only is the company defunct but the principal officers are retired, not only from the bagel business in New York,

[12]

they are retired from the bagel business anywnere and they are retired and living in Florida and that no corporate officer was named as a respondent, so there is no individual liability and there should be no liability for the predecessor, Neptune Bagel Bakers since there is no such entity in existence.

JUDGE ROSE: Any objections to the motion which I gather is what?

MR. KRAMER: To delete the respondent Neptune Bagel Bakers Inc.

MR. APPELL: Yes, we do object.

MR. SISKIN: I object, your Honor.

JUDGE ROSE:What is the basis?

MR. SISKIN: Several, your Honor.

In the first place, this Oscar Stern is not a named defendant, not even remotely linked to the proceedings herein and I think you are going to be introducing a whole host of irrelevant evidence here.

The issue before this court is whether these two corporations, in whole or in point had joint or several liability admittedly by the government's counsel, the NLRB's counsel.

There has never been any adjudication on that issue and I don't think we can dismiss with a wave of the hand the issue as to whether we are a transferee and passing

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along and receiving the liability of a predecessor.

I think, as your Honor pointed out, that motion should be kept in abeyance until we come to a determination of the facts before the court and there are no facts before the court on the issues described.

JUDGE ROSE: Do you have anything to say, Mr. Appell?

MR. APPELL: I basically would make similar remarks in support of my objection.

MR. KRAMER: Your Honor, at this point I would ask that the counsel look at the two documents and that they be received in evidence.

I don't believe there is any question since there is Footnote 1 in the back pay specification that the board has been put on record years ago that this sale took place and these documents are put in the record solely to substantiate what the board has acknowledged in its own footnote.

JUDGE ROSE: Any objections to these documents that have been offered by Mr. Kramer?

Have they been marked? Would you mark them, please, Stern Exhibit 1 for identification and 2.

(Documents marked respectively Stern Exhibits 1 and 2 for identification, of this date)

MR. KRAMER: Your Honor, I would respectfully point out that there may be a conflict of interest, not only

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documents.

I'm not quite sure what the precise standing is that Oscar Stern has, an individual, has in this proceeding, but as far as the receipt of the documents themselves, I would not object.

JUDGE ROSE: Very well then, Stern Exhibits 1 and 2 will be received in evidence.

(Whereupon Stern Exhibits 1 and 2 for identification received in evidence, of this date)

JUDGE ROSE: If there are additional documents that are relevant to the issue of successorship, liability and the like, of course I will receive them when they are offered.

It seems to me, however, Mr. Kramer, that your motion with regard to Neptune and Mr. Stern, to the question of compliance really doesn't have anything to do with what we are hearing today which is the question of the amount of damages, the question of the unfair labor practice liability having already been established, and now we are here to determine how much and whether or not anybody who has found to owe so much back pay in fact even now exists is a totally different thing.

I am not sure it would be appropriate to decide that at this point.

MR. KRAMER: Well, your Honor, the reason I am here

[22]

in court and any attempt here to glide over this vital issue I think is poor law and poor facts and poor practice.

JUDGE ROSE: Well, we are talking about a coptle of different things, it seems to me, at least two, maybe more, as to the questin of liability of Neptune Bagel Bakers Inc. and that has been found by the board and the Second Circuit and that has established in this proceeding and we will find out how much back pay is owing as a result of that liability.

I don't see how I can enter an order dismissing now a party that has already been found to be liable in this case.

It seems to me the way you are talking about Mr. Kramer really comes up in the question of compliance then with any determination I should make on the back pay.

Obviously, if the corporation doesn't exist it doesn't exist and you can't get blood out of a turnip, I guess, so I will overrule your motion for those reasons.

As to the other matter with regard to Neptune Brighton, we will have to hear some evidence on that at the proper time and to determine whether or not and to what extent that corporation should share in some or all of the liability of its predecessors if in fact there is a predecessor succession relationship.

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Is there anything else preliminary in nature?

MR. APPEL: Yes. I believe there was also a motion on Pops.

You may want to rule on that.

JUDGE ROSE: Which one?

MR. APPELL: About the liability of Pops.

JUDGE ROSE: What about Pops?

MR. SISKIN: By footnote in the same specifications, your Honor, the board, the NLRB specified that the record has previously established by trial examiner determination that Pops had survived -- I am not sure that it is the actual statement of facts and until I can review the vast amount of prior precedent and litigation I am not prepared to demonstrate that either way until I can go back and check the record.

It is a rather voluminous file and occupies about eight file cabinets.

What I am trying tosay, your Honor, merely that because that is stated to be sure I am not so sure it is so.

JUDGE ROSE: All right. Do you want me to make some kind of ruling on this at this point?

MR. SISKIN: No, I would ask that be held in abeyance until the appropriate time.

JUDGE ROSE: Very well, I will do that.

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Anything further of a preliminary matter?

MR. APPELL: Yes, your Honor.

If I am correct none of counsel here represent Flatlands Bakery.

MR. SISKIN: That is correct.

MR. APPELL: I don't believe we received any answer from Flatlands so I would move --

JUDGE ROSE: Flatlands?

MR. APPELL: Yes.

I would therefore move for a summary judgment as to Flatlands Bakery liability.

I am sorry, I have just been advised someone is here representing Flatlands but has not made an appearance so I withdraw my motion.

No, I don't withdraw my motion because we did not receive a written answer, but someone is here appearing for Flatlands.

JUDGE ROSE: Is somebody in the hearing room entering an appearance in behalf of Flatlands Bagel Bakery?

MS. LEWIS: I am sorry --

JUDGE ROSE: Just a minute. We are on the record.

Who are you?

MS. LEWSI: I am Harriet Lewis, an employer at Flatlands Bagel Bakery.

JUDGE ROSE: What is your position with Flatlands? [25]

MS. LEWIS: Secretary-treasurer.

JUDGE ROSE: Are you here representing Flatlands in this matter?

MS. LEWIS: Right.

JUDGE ROSE: Did you file an answer?

MS. LEWIS: No.

JUDGE ROSE: Did you get a copy of this back pay specification?

MS. LEWIS: Yes.

JUDGE ROSE: Do you have an attorney?

MS. LEWIS: Well, I was advised by our attorney that we didn't need an attorney to represent us, that we could come down here and see just what part we had to pay.

I am not saying we are not liable for a certain amount. We just feel the amount is wrong so he said we could come down by ourselves rather than spend the money of legal counsel.

In other words, if we have counsel representing us it would be very expensive and it would be too much, so he said we could come down by ourselves and then straighten it out by ourselves.

JUDGE ROSE: Very well. We will include you in on the discussions then.

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I am going to take your motion, Mr. Appell, under advisement with regard to Flatlands.

Anything else?

MR. APPELL: Yes, your Honor. I would move for a striking of the answers filed by Mr. Siskin on behalf of the Bagel Bakers Council and the various employer members whom he represents on the grounds that the answer does not comply with Section 102.54 of the board's rules and regulations which state in pertinent part " as to all matters within the knowledge of the respondent including but not limited to the various factors entering into the computation of gross back pay, a general denial shall not suffice to such matters if the respondent disputes either the accuracy of the figures in the specification or the premises on which they are based, he shall specifically state the basis for his disagreement, setting forth in detail his position as to the applicable premises and furnishing the appropriate supporting figures".

That would be in Paragraph B of Section 102.54, and then Paragraph C states in pertinent part "If the respondent files an answer to the specification but fails to deny any allegations of the specification in the manner required by Subsection B of this section and the failure so to deny is not adequately explained, such allegation shall be deemed to be admitted to be true and

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P R O C E E D I N G S

JUDGE ROSE: We will be on the record.

Proceed, Mr. Appell.

MR. APPELL: At this time, your Honor, I should like to call Mr. Sidney Levy to the stand.

JUDGE ROSE: All right, Mr. Levy.

Whereupon,

SIDNEY LEVY

called as a witness, having been first duly sworn by Judge Rose, was examined and testified as follows:

JUDGE ROSE: Please be seated.

DIRECT EXAMINATION

Q (By Mr. Appell) Mr. Levy, state your full name and office address for the record.

A Sidney Levy, compliance officer, National Labor Relations Board, 16 Court Street, Brooklyn, New York.

Q Mr. Levy, for how long have you served as compliance officer of Region 29?

A I have been the compliance officer of Region 29 since the opening of the office in January, 1965.

Q Pursuant to your role as compliance officer have you been involved in the compliance aspects of the case that we are hearing today?

A Yes.

Q I refer you to the back page specification and notice of hearing.

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or the charging union and the --

MR. SISKIN: Objection. I am going to move to strike this.

The question was limited solely to a different subject than Mr. Levy is testifying to now.

Do you want to repeat the question, please?

JUDGE ROSE: No, no, I remember the question.

Mr. Appell, this will not be very helpful for me to try to decide this case or the board or the Circuit Court.

Mr. Levy's understanding of what may or may not be somebody's contention and whether or not somebody else contested that contention is just simply not helpful.

Just ask him, Mr. Appell, if he took into consideration these factors and if he did he did and on what basis.

If he did he didn't.

MR. APPELL: I believe he already answered he didn't and I'm asking for the basis of not having included it.

JUDGE ROSE: What difference does it make?

Q Mr. Levy, were there any discriminatees for whom you found that interim earnings exceeded the gross back pay of the 1966 year?

A Yes, I foundthat to be true in about 15 cases of persons who responded to our compliance inquiries and

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submitted information.

We determined that on the same basis, the same formula that is set out in the back pay specification, that 15 of them or about one-third of the number appearing in the back pay specifications had earnings equal to or greater than what they would have earned absent the discrimination.

Q Mr. Levy, with respect to Footnote 1 on Page 1 of the back pay specifications concerning Neptune Brighton Bagels Inc. as a successor, can you tell us the information you had on which to base such an allegation?

A Yes, that allegation is based simply on the fact that Neptune Brighton Bagels purchased the bagel bakery theretofore operated as Neptune Bagel Bakers Inc., continued to operate the same business at the same location.

The purchase, as I understand it, included --

MR. SISKIN: I'm going to move --

JUDGE ROSE: Just a minute, Mr. Levy, there is an objection.

MR. SISKIN: I would like to state this testimony is coming in on material and extraneous matter outside of the record.

If the witness knows of his own knowledge I would allow this, but apparently he does not.

reinstatement, in your files?

A I couldn't answer that without searching those files as has been pointed out and this has been going on for quite a long time.

Q Do you know how many employees were involved and the names of those employees?

A Well, at one point I had about a hundred potential claimants.

Q Let me get only to reinstatement, I am talking about, those employees that had been reinstated.

A No.

Could you restate your question with respect to reinstatement?

Q Do you know how many employees had actually been reinstated or applied for reinstatement and the names of any of those employees, and do you have anything in your files which will support your answer?

A No. I have some -- I recall I have some notes with respect to some documents and statements that I looked at at some point in the course of my investigation, but I don't know how many people individually applied or did not apply.

Q Do you know the date they applied or are you aware if it is the February 1st date that I'm talking about?

A Yes, in around February, 1968.

[174k]

has not finished with Mr. Levy; is that correct?

MR. APPELL: That is correct, your Honor.

JUDGE ROSE: We will do that.

Proceed, Mr. Siskin.

DIRECT EXAMINATION

Q (By Mr. Siskin) Your name and home address?

A Julius Brooks, 4408 Avenue K, Brooklyn.

Q Mr. Brooks, how long have you been a member of the union?

A 13 years.

Q So as I gather you became a member in 1963?

A Approximately.

Q And were you a participant in the labor problems between the Bagel Bakers Council and the union?

A No, I really didn't know anything about it. In what way?

Q Were you out on strike?

A Yes, sir.

Q And did there come a time when you were called out on strike during a struggle between the Council and the union?

A Yes, sir.

Q Refreshing your recollection was that sometime in 1967?

A Yes.

[174L]

Q To the best of your recollection do you recall what date that was?

A No,sir.

Q During the period from February 1, 1967 to September 30, 1968 will you tell us what you did during that period of time?

A I was working where the union sent me.

Q Were you working on a regular basis during that period of time?

A I had one shop that I was in on a regular basis.

Q How many shops would you normally go to during a given week?

A Three.

Q Wereyou pretty much regularly employed during that year, during that period?

A To the best of my knowledge I mean I may work mostly in one shop and then once in a while I would get another call from another shop.

Q Was your time pretty much occupied during that period of time?

A Yes, it was occupied, yes.

Q On a full time basis?

A No, not on a full time basis.

Q Well, what did you consider full time?

A Five days. I was working four days.

[174M]

Q Didn't the union contract originally call for a four day week?

A Well, I imagine it did, yes, but --

Q So that you worked --

MR. APPELL: Excuse me, the witness didn't finish.

JUDGE ROSE: Please, Mr. Siskin.

Q (Continuing) It was a period also where everybody was working five days and six days they were going along, but according to the union contract, you consider four days a full week's pay.

Q Isn't that correct, that four --

A I mean that is what the practice was, that everybody else was working more than four days.

Q Strictly by the union contract wasn't it a four day work week?

A Yes.

Q And would you consider yourself to have been fully employed according to the union contract and union practice if you worked four days? Isn't that correct?

A Right.

Q And you would consider yourself to receive full employment wages if you had been making four times $28 a day during this period; isn't that correct?

A That's right.

Q So that all you could normally expect as a result

[1740]

the year 1967 you made a total of $10,646 does that refresh your recollection?

A Yes.

Q Do you have copies of your tax returns with you today?

A No, I don't, but I have them home. I could have brought them.

Q Do you have copies of any payroll records with you?

A I don't have any records with me.

Q With relation to the time spent in '66 versus the time spent in '67, would you say it was almost substantially the same time?

A What do you mean the same time?

Q Well, did you work approximately the same time in volume as you did in '67 as you did in '66?

A Well, it was one year I made less so I had to work less in '67, right?

Q You show that you made $10,000 for Bagel Mart in 1967.

A Right.

Q Did that reflect overtime?

A No. What do you mean reflect overtime?

Q Was overtime built into the $10,000 figure that you --

A In Bagel Mart, yes.

Q It was overtime on that, wasn't that true?

[174R]

A True.

Q Can you tell us how that computation was made of overtime in that particular concern? Was it based upon more than --

A Based on a bigger order all the time of bagels, volume.

Q How many hours did you reflect you worked that particular time in '67?

A Hours?

Q Yes.

A It is hard to break down in hours. Usually you get paid by the piece. It was all piecework. You get paid so much a box.

Q Would you say that was a regular employment that you had?

A That was regular, yes.

Q Five days a week?

A That's right.

Q Sometimes was it six days a week?

A I never worked six.

Q I notice that for the year 1967 your employment for Bagel Mart was $10,000 and in 1966 your employment total was $7900.

A It might have dropped.

Q It went up the other way. It increased in '67.

[174T]

an error; isn't that correct?

A Yes.

MR. SISKIN: I have no further questions.

CROSS EXAMINATION

Q (By Mr. Appell) Mr. Brooks, do you recall people working six days a week?

A People working you say?

Q Six days a week in the bagel industry in '67 or '68.

A You said people, right?

Q Yes, anybody.

A Definitely, yes.

Q Do you remember anybody by name or how many?

A I remember Irving Levy working six days.

Q Do you remember what year or years that was?

A During that period. He was the only one I remember.

Q Do you remember if there were others even though you don't remember them by name?

A Definitely.

Q Would you say it was a widespread thing or just a few people?

A The whole industry I think was working more than four days, definitely, five to six. That is what I recall.

Q Do you remember having knowledge back in 1967 or '68 that the contract only said you were supposed to work

[1740]

without overtime?

A This I never even knew about, supposed to work without overtime.

As far as a normal week, four days and the base pay they just stipulated. It was never mentioned that way.

Q You say you worked five days a week?

A Yes.

Q Did anyone from the union ever tell you you were not supposed to be working five days a week?

A No,sir.

MR. APPELL: Your Honor, if I might just tell them to keep it down outside.

JUDGE ROSE: Yes, please.

Q Mr. Brooks, did you have knowledge of any bagel shop in the city working on a machine basis in 1967 or '68?

A No.

Q Are you employed now at a machine shop?

A No,sir.

Q Do you work in a bagel shop now?

A Yes,sir.

Q It is a handcraft shop?

A Handcraft.

Q Do you recall receiving W-2 forms from your employers in 1967, 1968?

PROCEEDINGS

JUDGE ROSE: Let's go on the record.

MR. SISKIN: At this point, Your Honor, I'd like to make several motions.

One of those is to amend my Answer to include the affirmative defense of statute of limitations, with respect to Neptune-Brighton Bagels, Inc.

It appears from yesterday's testimony that Neptune-Brighton Bagels, Inc., had never previously been, "vouched in," to this proceeding, by service of any papers.

It is my understanding they never have been served with any of the injunctive papers, is that correct, Mr. Levine?

They have never been served with any papers at all. And Mr. Levy indicated that the first time they came into this case was by receiving notice of the notice of the specifications.

There had been some prior appearance here by the attorney for the transferor corporation, who appeared here, and I believe also has submitted a motion with respect to his client.

Now, in view of what I have, myself, ascertained yesterday, and which appears on the record, I would submit that it would be in the interest of justice, and so as to prevent an argument of surprise at a later time,

that the Court allow me to amend my Answer to include that specific affirmative defense of statute of limitations, with respect to Respondent, Neptune-Brighton Bagels, Inc.

JUDGE ROSE: Well, Mr. Siskin, we don't have a statute of limitations, as such, that would apply in this situation, I don't think.

The statute of limitations in the National Labor Relations Act is in Section 10-B, and says, you can't find an unfair labor practice, predicated on events that occurred more than six months prior to the filing of the charge.

MR. SISKIN: That's the point, Your Honor.

You see, --

JUDGE ROSE: But I don't think that that is appropriate at this time.

Now, it may well be that you, if your motion for an affirmative defense is that Neptune-Brighton was never made a party to the original action, and therefore cannot be a party at this time, if that's the import of your motion, then I'll accept the motion.

MR. SISKIN: That is certainly the import, Your Honor, and I'd be glad to accept the revision of it.

But a collateral issue, of course, is, I guess you'd call it, lack of jurisdiction over the Defendant, or Respondent. They never had been a party.

I don't believe that they've been complied with at all in this proceeding, with respect to that particular Respondent, and I would request at the earliest possible opportunity, Your Honor, allow us to bring into conduct a hearing with respect to transferee liability, with respect to that particular Respondent, under the rules set forth in the Golden State Bottling Company case.

Thank you, Your Honor.

JUDGE ROSE: Okay.

Well, I'll take your motion, if you're asking could I dismiss out of this proceeding Neptune-Brighton, I'll take that under advisement.

I do wish, however, at sometime during the recess, that Counsel get together and see if they can't work out a factual stipulation with regard to the successorship question, that is, the facts.

MR. SISKIN: Yes, sir.

JUDGE ROSE: And then we can go from there.

MR. SISKIN: Thank you.

JUDGE ROSE: At this time now, Mr. Siskin, you're going to proceed to call the discriminatees?

MR. SISKIN: Yes.

May I ask Counsel for the NLRB, whether they have all the records with respect to these Claimants here today?

MR. APPELL: Yes, we do, Your Honor.

JUDGE ROSE: On the record.

Call your next witness.

Mr. Silverman?

MR. APPELL: Yes.

MR. SILVERMAN: Before we do anything, may I apologize to the Court for any disturbance I may have caused.

Whereupon,

JOSEPH SILVERMAN

called as a witness, was duly sworn and testified as follows:

JUDGE ROSE: Please sit down and state your name and address for the record.

THE WITNESS: Joseph Silverman.

37 Marlboro Road, Brooklyn 11226.

DIRECT EXAMINATION

Q (By Mr. Siskin) Mr. Silverman, are you familiar with the years 1966, '67 and '68 with respect to certain claims made for back pay and certain back pay specifications, that are the subject of this proceeding?

A I have certain figures.

I have seen figures here, but I haven't got the chart in front of me that they have.

But I do have certain figures, and certain figures they have that I do not recollect or know.

Q Now, do you recall anything about the comparative years '66, '67 and '68, with respect to the kind of

volume that the Union shops had during those years?

A To an extent, yes.

Q Do you recall anything about the non-union shops, or the non -- excuse me, the non-Council shops, I should say?

Do you recall --

A Just a minute, you're not clear.

You say Union and non-Council shops.

Q I should say, Council and non-Council.

A There are differences.

Q Yes.

You've got two charts here.

One is Council members, and the other non-Council members?

A Phrase that question again, please?

Q Sure.

Do you recall, to the best of your recollection, volume conditions, how busy the trade was, during the years '66, '67 and '68, with respect to Council members and non-Council members?

A Well, I cannot speak for the Council members at the time of the lock-out, because I was not there.

But, in the bakeries where I worked, I recall that.

Q What was that bakery you worked at?

A Not bakery, bakeries.

Q Bakeries, I'm sorry.

A There were several bakeries.

There were two bakeries in main that I worked.

One was Bagel Wheel, and the other was Republic and Greenspan.

It was one firm that changed the name in the middle of the year, one time. But it was one firm, Republic and Greenspan.

Then there were additionals.

I went back to work for the bakery I worked previously. These were the two I worked for all year, '67 and '68, 66.

Q Was this full time employment?

'66?

'66.

A '66, yes. '66 was full time employment, for all the bakeries.

Q How about '67?

A Only in those bakeries where I was not locked out.

Q How about '68?

A Same thing.

There were a few additions that came in later.

I did get a little extra work later. But it did not cover the amount of work that I had in '66.

Q Did you work full days in '67?

A In those bakeries where I worked?

Q Yes.

A Yes.

Q Did your earnings, shown on this Appendix 36-A, Joseph Silverman, include overtime for those three years?

A Look, you give me figures what happened eight years ago. I don't know.

But, there was overtime all the time.

So, I don't --

The figures don't mean anything, because I just don't remember what happened --

Q Do you recall what the -- the normal rate per day would be, without overtime?

A Without overtime?

Q Yes.

A In 1966?

Q '67 and '68.

Were there different figures for those three years?

A I think they were the same.

Q What were they?

A I haven't checked my '68 one.

But, at that time, it was 26¢ a box, which was $26.00 a day.

Q For how many days?

A Each day, $26.00, if you worked one day, if you worked

seven days. It was $26.00 minimum day. Minimum day.

That did not mean that we stopped at 26. We very rarely ever made 26.

The standard practice, the thing that was, that existed, we made a lot more each day.

We made 50, we made 70, whatever the traffic called for. Whatever the amount of work they wanted.

It was piecework.

Q Do you recall whether there were prohibitions against overtime in your Union contracts during those years?

A I do not know what was in the Union contract during those years.

I don't remember.

But I do know this. That whatever was in the contract, we were asked to make more -- more work than the hundred boxes, by the bosses, themselves. And they needed it, and we gave it to them.

Q Again, did you ever see the Union contract during those years?

A I just don't recall.

Q Now, is it fair to say that there were four days normal work week, without overtime, or five days?

What was the normal trade practice?

MR. APPELL: Can we set a time, Your Honor?

Q In the year 1966, '67 and '68.

A Could I hear that question again?

I don't quite catch it.

Q Sure.

Can you tell me what the normal work week would be in terms of days, during the year '66, '67 and '68, as far as you were concerned, to the best of your recollection?

A As far as I was concerned, in '66, I had between five and six days.

Q Does it ever ring a bell to you remember that it might have been four or five days as a standard work week?

A No, sir.

Q Do you know when overtime began with --

Withdrawn.

With respect to a rate exclusive of overtime, in a given day, is it fair to say the rate, according to your memory, was $26.00 a day, for '66, '67 and '68?

A You know, when you say overtime, I don't know what you mean by overtime.

You mean, hourse that we worked more?

We didn't work hours more.

It was piecework. That was no thing with us, the amount we made.

So, I don't know what you mean by overtime.

Q Now, with respect to your earnings during the year 1967, were you given hourly totals during a given week,

as to how many hours you worked?

A Never.

It was piecework.

Q Okay.

Now, was there a standard as to what the piecework would be, for a normal day, a normal eight hour day, or whatever?

A There was no standard, because we all worked at different speeds.

It was piecework. Whatever the traffic was able to bear, whatever we were able to produce, this is what we got paid for.

This was standard practice.

Q Do you recall a time when there were -- when there was a dropoff in the wholesale trade, in the bagel business, that you were working for, and those employers that you were working for?

A Not the bakeries I was working for.

Q Do you recall a time in 1968, when there might have been any change in the wholesale trade?

A Those bakeries that I worked for, if anything, did a little more business.

Q Those were non-Counsil members, were they not?

A Those were non-Council members.

Council members had locked us out in those years.

A I don't recall any such thing.

Q Does the date February 1, 1968, have any significance to you?

A None at all.

Q Do you recall when the lock-out first occurred?

A Yes.

I have it --

Q The date?

A Yes, I can give you the date.

Just let me look it up. I can give you the dates. I have everything written down, when we stopped working and everything.

My last paycheck was February 3rd, from Benson.

After that was the lock-out.

Q February 3rd?

A That was my last paycheck.

The lock-out may have been a little bit before, I don't know. But my last paycheck was February 3rd, 1967.

MR. SISKIN: I have no further questions of the witness at this point.

JUDGE ROSE: Cross examination?

MR. APPELL: Yes.

CROSS EXAMINATION

Q (By Mr. Appell) Mr. Silverman, was there ever a time when you were told that you were not going to work as many

wholesale?

A Nothing was made as far as the business was concerned.

All I ever discussed with them was the amount of work they needed, and they seemed to need more work, those that were working.

Q Were your hours cut back in any way in '67 or '68, at the Employers you worked at?

A The Employers I worked in were not cut back.

Just the ones I was locked out of.

Those are the hours I lost.

Q Do you have any personal knowledge of relatives of the Employers, who were non-Union employees, working in any Council shops in '68?

A Rephrase that, please.

Q Do you have any personal knowledge of any relatives of Employers, or non-Union members, working for Council Employers, in 1968?

A Well, I think Benson's son worked there, Kalkstein's son worked in his bakery.

MR. SISKIN: Objection.

I'd like the answer to be responsive to the question.

MR. APPELL: I believe it is.

JUDGE ROSE: I think it's reasonably responsive.

Where are we going now?

MR. APPELL: This is with respect to the issue of

when a valid reinstatement offer was made.

It's Respondent's contention, I believe, that there was one in February, '68.

We're trying to establish that work, in fact, was not provided to unit Union, and Union members, but was provided to relatives of Employers and non-Union members instead, so the lock-out did not end as of February, '68.

JUDGE ROSE: Very well, proceed.

THE WITNESS: I do know --

JUDGE ROSE: Mr. Silverman; just answer questions, please.

Go ahead.

Q (By Mr. Appell) Do you have anything to add to the answer you've already given?

A Yes.

Q Go ahead.

A We were picketing Neptune-Brighton. He had a non-Union worker working there. He was working there, and he had a non-Union worker working there.

Q Who is, "he?"

A Donny.

Q Donny Chakofsky?

A Yes.

MR. SISKIN: Objection.

This is way beyond the scope of the direct examination.

If he wants to make the witness his own witness, let him do that.

This is way beyond the scope.

JUDGE ROSE: Very well.

For these purposes, he's your witness.

Go ahead.

Q (By Mr. Appell) And whom did you see work in Neptune-Brighton?

A Donny.

Q Yes?

A And he had a young man there, I forget his name, working the oven there, non-Union.

Q Was this a job normally done by Bagel Union members?

A Yes.

Q Can you fix a period of time or date when you saw this young man working in Neptune-Brighton?

A It was during the time of the picketing, at the time of the lock-out.

We were picketing.

Q Can you fix a year?

A No, I can't recall that far back.

Q Could it be '68, the last year?

A It was from the very beginning they had it.

From the time we started.

The thing was going on right along. Never stopped.

Until, of course, there was a settlement.

Q In the shops where you worked in 1967 and '68, did you ever notice any employees laid off for lack of work?

A In the shops where I was working?

Q Yes.

A The non-Council ones?

Q Yes.

A No.

Q Did you ever work a six day week in 1967 and '68?

A No.

Q Do you know of any employees who did?

A I don't know of any.

Correction.

You say, '68. You don't mean after the -- after we went back to work, do you?

Q No. Before that.

A You mean, during the lock-out.

MR. APPELL: I have no further questions, Your Honor.

REDIRECT EXAMINATION

Q (By Mr. Siskin) For the year 1966, you'd consider that a buy year, wouldn't you?

A No.

Q You made $17, -- $16,791.00?

A That's correct.

Q Did you ever make more than that in the past?

A Yes, I made more in the past.

I made more, I made less.

Yes.

Q Now, was that a five day -- Was that a five day, normal work week, or a four day work week, or a six day work week, in '66?

A There were not normal work weeks.

We worked five days, we worked six days, whatever the traffic called for.

Q Do you recall whether there were a significant number of weeks during the year that you worked six days?

A During --

Q '66.

A '66?

I don't recall just how many.

There were six day weeks, there were plenty of them.

Q Would you say half the weeks were six day weeks?

A Ten years ago, I don't remember.

Q Do you have any distinct recollection as to the month of January, 1967, just prior to the lock-out, Mr. Silverman?

A I don't know what you mean.

Q As to working -- As to whether the volume conditions in '67 versus '66?

A I still don't know what you mean.

Q So, in any given week, you would only work those shops where the Union delegate said, go to Shop X, or Shop Y, or whatever?

A No. I didn't say that.

There were certain shops I was set in on given days, and those shops the Union couldn't take me out of. This was my job.

Sometimes I would get an extra day's work someplace, but this was sometimes.

MR. SISKIN: I have no further questions of the witness.

JUDGE ROSE: Anything further, Mr. Appell?

MR. APPELL: No, Your Honor, thank you.

JUDGE ROSE: I have a couple of questions, Mr. Silverman. Maybe you can explain it to me.

In the years 1966, 1967, what was the basis of your compensation?

How did a bagel baker get paid?

THE WITNESS: It was piecework.

JUDGE ROSE: Explain that.

THE WITNESS: Yes. I'll try to explain it.

We made a certain amount of bagels.

JUDGE ROSE: How many?

THE WITNESS: I'm coming to that, Your Honor. Please have a little patience.

We would put sixty-four bagels in a box. Seven boxes would be counted as eight. Fifty-six was considered a box. Fifty-six bagels was considered a box of bagels.

JUDGE ROSE: Fifty-six bagels?

THE WITNESS: Yes, was considered a box.

For every fifty-six bagels we made --

We worked with a partner.

For every fifty-six -- at that time, it was 26¢ a box. I would get paid 26¢ for the box, and the man who's my partner would get paid 26¢ a box.

Sometimes we would do what they call the single.

If I worked by myself, I would get 52¢ for the box. I wouldn't have a partner then.

Because, whatever he made, I shared, you see?

It was shared that way. We were -- We were allotted at least a minimum.

If we went into a bakery, we had to earn at least our $26.00 for the day.

If the man only had one bagel to make, if he needed a man, he had to pay the man for his day's work.

If he needed more, he would request more, and we would give it to him.

And the standard practice was generally, it was very, very rare we only made $26.00. We made a lot more.

Also, besides that pay, and I don't know why this is not taken into consideration, and why we're limited, besides that, there was money sent up to the Union, vacation money, holiday money, and in 1966, I earned vacation pay, $1,239.00, which is not listed on there, but this was actual pay that I got.

JUDGE ROSE: How much was that again?

THE WITNESS: $1,239.76.

In 1967, on that, we received on that vacation on the holiday pay, $224.44. But, there was a change made in '67, and that's why I don't know why we're limited to the amount I'm limited.

Besides the day's pay that we earned, the 26¢ a box, instead of giving the Union the money, to give us for holiday and vacation, they got into a new system, and they allotted us on top of whatever we earned piecework, three and a half dollars a day to go towards our vacation, and holiday.

This is not even listed here.

And while it is said that I earned $1,891.00 from Benson, my actual loss from '66 to '67 was $3,564.92. Actual loss, $3,564.92.

And, also, the -- according to this thing that I have here, it states -- it states over here, according to the Second Circuit Court --

JUDGE ROSE: Mr. Silverman, I'm not interested in what the Second Circuit Court had to say.

What I'm trying to get from you, really, is just the basis of your compensation.

THE WITNESS: Yes, all right.

This is the way it was done.

JUDGE ROSE: Tell me, how many hours a day, if you were working with a partner, would you work to make, I guess it would be a hundred boxes?

Is that right?

Is that what --

THE WITNESS: Yes.

JUDGE ROSE: If each of you got $26.00 --

THE WITNESS: It would be a hundred boxes.

JUDGE ROSE: How many hours would it take you to do that?

THE WITNESS: That depended upon the man.

As I said, it was piecework, hand work.

I was a very fast worker.

It took me four hours.

Someone else, it would take six hours. Someone else, it would take eight hours.

All depended upon the ability of the man, and the speed of the man.

JUDGE ROSE: It would take you four hours to do a

hundred boxes by yourself or with a partner?

THE WITNESS: No, a hundred boxes.

If I made fifty, it was considered a hundred.

I got paid for a hundred, because, as I said, both of us got paid.

If I made a box, my partner got paid for it, too.

If I made it myself, I would get doublt the amount, 52¢.

So, fifty boxes was considered a hundred, if you made it by yourself.

If you worked with a partner, you had a hundred boxes between you.

A hundred boxes, I got $26.00, he got $26.00.

JUDGE ROSE: Right.

When you worked with a partner, did you both do the same thing?

THE WITNESS: We both did the same thing.

I may have been faster than him, but we shared the amount of money. Didn't matter who was faster. The pay was shared between the two partners.

If I had a man that was, that I was twice as fast as, I still shared my pay with him.

JUDGE ROSE: I see.

What time of day would you go to work?

Normally.

THE WITNESS: It varied with days.

JUDGE ROSE: Can you tell me from what hour to what hour?

THE WITNESS: Well, there were bakeries that I would go in eight in the morning, and I stayed until three, four in the morning.

And there were bakeries I would go in at four o'clock, and leave at 7:30, eight o'clock. I mean, in the afternoon.

It's all according to the amount of work that I did. What was involved.

And then they had shifts, came the weekend, the weekend is Thursday, Friday, Saturday, they needed stuff in the stores for Saturday and Sunday. Then they would have shifts.

I would come in, say, in the morning, and I would make three, four hundred boxes, whatever it is, it would take me sixteen hours, whatever the amount was. Then there would be another shift right after me.

This would continue around the clock over the weekend, according to the bakery. Some bakeries had less.

But, generally speaking, this is the way it would work. There were some bakeries that didn't need so much on Thursday, so they had Friday, Saturday, Sunday was not so busy. Sunday they worked for Monday. That was an ordinary weekday already. It slowed up a little bit.

We would work around the clock. All depended upon what they needed.

And there would be shifts, like I said.

JUDGE ROSE: Are bagels normally baked for consumption on the day that they're baked?

THE WITNESS: For the next morning.

It's baked at night, delivered to the stores during the night, and they sell it the next day.

JUDGE ROSE: So, the number, if I get your testimony right, the numbers of hours that you would work for any given bakers, would vary?

THE WITNESS: Very much.

JUDGE ROSE: Depending on the requirements of the job?

THE WITNESS: Very much,yes.

JUDGE ROSE: Now, for a particular bakery, week after week, would the hours be about the same?

In other words, would they have about the same amount of business for you?

THE WITNESS: Generally, yes.

There have been exceptions.

Sometimes they get special orders, and then, too, on delivery, sometimes they would make delivery the same day, on certain things. But, generally, it was for the next day. I'm speaking about generally.

There were times during the day when they'd get a call, or there would be certain deliveries to make that day. I don't know.

But, generally, it was for the next day. That was the general rule. And the amounts were generally, more or less, the same.

JUDGE ROSE: For a given bakery?

THE WITNESS: Sometimes the boss got fooled.

I went into a place one time, after Passover.

Passover, they didn't expect to work, because you were off a week, and your hands would hurt, when you start working.

The boss said to me, you're not going to make the order, anyway. Make as many as you can. He got so flooded with bagels, he went crazy that day. He didn't think I'd be able to make that much. There's no telling exactly what it was.

Generally, week after week, within 25, 30 boxes, it would be the same.

Sometimes it would vary a lot. Sometimes they'd get special orders, get a cut, it was a business.

JUDGE ROSE: Okay, I think I understand.

Anything else?

MR. SISKIN: Yes.

Q (By Mr. Siskin) Who delivered the bagels for the

(Whereupon, the hearing resumed at 1:50 o'clock P. M.)

JUDGE ROSE: We'll be on the record.

Let's be in order.

MR. SISKIN: What was Your Honor's ruling on my motion to amend?

Your Honor, I'd like to know the Court's ruling, or has it been deferred, with respect to my motion to amend?

JUDGE ROSE: I granted your motion to amend your Answer.

I did not grant the substance.

MR. SISKIN: I understand.

Thank you.

With respect to the issue before this hearing, as to whether Neptune-Brighton Bagels, Inc., is deemed a transferee, and a party to be held responsible in any back pay aware, Counsel for the NLRB and the Respondent have attempted to stipulate to those facts which are fairly agreeable between them.

For purposes of presenting an agreed set of facts to the extent that that is possible, Counsel for Respondent would like to formalize just a few of the basic facts that he submits will not be disputed.

That on April 26th, 1967, a contract was entered into to sell the bakery known as Neptune Bagel Bakers, Inc., located at 371 Neptune Avenue, Brooklyn, New York, to

parties by the name of Donald Chakofsky, C-H-A-K-O-F-S-K-Y, and Robert Krublit, K-R-U-B-L-I-T.

That contract, apparently, was subsequently assigned to Neptune-Brighton Bagels, Inc., and the transaction of sale was closed between Neptune Bagel Bakers, Inc., as seller, and Neptune-Brighton Bagels, Inc., as purchaser, on the 26th day of April, 1967.

Attached to that contract of sale -- Excuse me, attached to the bill of sale, was a statement by the -- was an Affidavit by the president of Neptune Bagel Bakers, Inc., that transferor had no debts of any kind or nature.

Off the record.

JUDGE ROSE: Off the record.

(Discussion off the record.)

JUDGE ROSE: On the record.

MR. SISKIN: Further, that Neptune-Brighton Bagels, Inc., had never been made a party to this proceeding, or any prior proceeding, prior to its receiving, and it is conceded that it received, notice of the back pay specifications herein.

Further, none, in the related Federal Court proceedings, none of the Court Orders or injunctive relief applications that were applied for or were granted in any extent, were ever served upon Neptune-Brighton Bagels, Inc.

Any others that you want to stipulate to?

MR. APPELL: No.

MR. SISKIN: That's all, Your Honor.

MR. APPELL: Your Honor, with respect to the proposed stipulations, I would note that the matters which are contained in Stern's Exhibits 1 and 2, are not disputed by General Counsel, so that any stipulation would be redundant.

I think these documents speak for themselves.

Just as testimony as to what the documents say, in the absence of some ambiguity, would be improper, so I think a stipulation is improper or unnecessary.

With respect to what documents were sent to the Employer, we allege, as a successor, I can only stipulate that Mr. Levy, as Compliance Officer of the Region, sent nothing of a formal nature to Neptune-Brighton, until he helped author and helped send out the back pay specification.

I cannot stipulate with respect to what previous steps may have been taken by other Board Agents with respect to Neptune-Brighton.

With respect to the Court Orders, I submit that any findings or the contents of any Orders by the District Court, or the Second Circuit, with respect to the 10-J proceeding, would not be dispositive of the question of the propriety of including Neptune-Brighton in this

proceeding.

This is a Board proceeding.

The 10-J, as Your Honor indicated earlier, had a limited purpose of remedying certain alleged fair labor practices, to preserve the status quo during the pendency of the Board proceeding on Complaint.

So, the only thing that I can really stipulate to is that Levy sent nothing to Neptune-Brighton in the back pay specification.

JUDGE ROSE: How about with regard to the Board proceeding, itself?

Do you contend that Neptune-Brighton received a copy of the Complaint, or a copy of the --

MR. APPELL: -- decision and order?

JUDGE ROSE: Were they made a party to the Complaint, other than --

MR. APPELL: To my knowledge, Neptune-Brighton is not mentioned in the Board decision at all.

It was not involved up to that time.

JUDGE ROSE: And they were not served?

MR. APPELL: Served with a Complaint?

Not to my knowledge.

JUDGE ROSE: All right.

So, if they're liable for back pay, they're liable because they are --

MR. APPELL: A successor.

JUDGE ROSE: -- a successor, pursuant to the Exhibits that are already in evidence?

MR. APPELL: Yes, sir.

JUDGE ROSE: Very well.

Shall we go on?

MR. SISKIN: Yes.

The next witness that the --

JUDGE ROSE: Off the record.

(Discussion off the record.)

JUDGE ROSE: On the record.

Do you have something you want to put on the record?

MR. APPELL: Yes, Your Honor.

With respect to Julius Ostrofsky, during the off the record discussion, he stated to us that he, to the best of his recollection, he worked steadily in the bagel industry in 1967.

Now, while he does not have records of the exact amounts, he believes that his earnings totalled approximately $95 hundred.

Accordingly, he has stated he would be made whole for any losses suffered by reason of discrimination against him by the Bagel Bakers Council and its Employer Members, by payment to him of $15 hundred from Tri-Boro Bagel, and he stated that he is fully aware that we have

Bagels now.

Q Do you recall the year 1967, and when the strike ended?

Or when the lock-out ended?

A Not too vaguely. Not too good.

It's ten years ago.

Q Did there come a time when you returned to a Council shop after the strike was over?

A When was it over?

Q Withdrawn.

Did a Union delegate --

Do you recall ever hearing from a Union delegate that the strike had been settled, or the lock-out had been settled?

A No.

Q The answer is, "No?"

A Not to my knowledge. No.

Because I went into business ten years ago, that would be 1967, I think, March would be ten years that I'm in business.

Q What was the name of the business you went into?

A My own business.

Bagel Den.

Q What?

A Bagel Den.

Q Was that a corporation?

A Yes.

Q What was the true, corporate name?

A Bagel Den.

Q Incorporated, or Corp?

A Bagel Den Limited.

Q Bagel Den Limited.

What was the date of incorporation of that corporation, do you know?

A March -- Well, before March it was formed.

But around March, I went into business.

Q Of '67?

A Well, it will be ten years this coming March.

So, figure it out, the dates.

I don't know how.

MR. SISKIN: I'm going to ask opposing Counsel to give me their credit documents with respect to Mr. Boykin.

Q While he's looking for the papers, was that corporation -- is that corporation still in existence today?

A Yes, it is.

Q Would it be fair to say, you've been working non-stop in that corporation, since that date that you started the corporation?

A You mean, has it gone out of business or still in business?

Q And he did the quarterlies?

A Yes.

Q Et cetera?

A Right.

Q Payroll taxes?

A Right.

Q Is it fair to say that you worked full time for Bagel Den, during the year 1967?

A I don't know what you call work.

I had a Union man work for me.

I wasn't allowed to work. All I did was run my business.

The Union man, at that time, when you went into business, you weren't allowed to work. Only a Union man was allowed to work.

All I was allowed to do is sell bagels.

Q Is it fair to say, though, your work was full time?

You carried on a full time business as president of the company during the year 1967?

A Me and my wife was the only one running it.

Q That was true for '68, as well, too?

A '68, '69, '70. Up to '76.

Q I'm going to show you a Social Security record of earnings, and ask if they refreshes your recollection as to what you made for the years 1967 and '68?

was going out of business, and they let the man work two days a week, and I worked the rest of the time.

Q Were those long hours that you worked?

A An average of fifteen hours a day.

Q For that business, isn't that correct?

A Right.

Q Did you work six and seven days a week?

A Six.

The store was closed Mondays.

Q Did your wife draw any pay in addition to these amounts?

A No.

Q Did you have any other jobs during that period of time, other than --

A No.

Q For the year 1967, Republic.

A I worked for Republic two days a week.

That's what forced me into business.

Q How about the year 1968?

A Who did I work for?

Q Just the Bagel Den, according to this list.

A Then I went into business.

This March I know will be ten years.

Q How much money did you draw out as a loan --

Did you draw out any money as a loan during that

He was a teacher.

Q Was that during the years 1967 and 1968?

A 1967, 1968, 1969.

Q Did your wife also help you out?

A Yes.

My son used to come in the weekends to help me out. He was a school teacher. Today, he's my partner.

Q How long had you prepared to enter into this business, Mr. --

A How long did I prepare?

Q Yes.

A Within one day.

Q Okay.

And --

A When I couldn't feed my family any more, because let me be honest with you --

Q I just asked you --

A Let me tell you something. The Union gave men six days work a week. I got two. I couldn't feed my family. That's when I was forced to go into business.

Let it be on the record. As long as you're asking questions, let's be honest.

MR. SISKIN: I move to strike that portion of the testimony as not responsive.

JUDGE ROSE: Granted.

If you know.

A I'll be honest with you, I don't know.

MR. APPELL: No further questions.

JUDGE ROSE: You're excused.

(Whereupon, this witness was excused.)

JUDGE ROSE: Call your next witness.

MR. SISKIN: Mr. Todaro.

Whereupon,

JACK TODARO

called as a witness, was duly sworn and testified as follows:

JUDGE ROSE: Please be seated.

Tell the Court Reporter your name and address.

THE WITNESS: Jack Todaro, T-O-D-A-R-O.

213-08 85th Avenue, Queens Village.

JUDGE ROSE: Proceed, Mr. Siskin.

MR. SISKIN: May I have the credit records for this employee, please?

I'll continue in the meantime.

DIRECT EXAMINATION

Q (By Mr. Siskin) Mr. Todaro, how long have you been a member of the Union?

A Since about '61. 1961.

Q What was your capacity in that Union?

A I was a bench man, a bagel maker.

Q Were you a kettle man, as the name is used?

A No, a baker.

Q A baker.

Okay.

And what was your normal work week, prior to 1967?

A I worked about five, six days a week, different shops.

Q What was the mrmal work week?

Do you remember?

A In hours or what?

Q In terms of hours.

A Well, I would say about ten hours. Ten hours a day.

Depends on the amount of --

Q Productivity?

A Amount of work.

Q Was productivity a norm?

A Yes.

Q In other words, that would determine how long you worked?

Is that true?

A It was, yes.

Q And were you aware that there were restrictions against overtime in the Union contract, during the year 1966 or '67 or '68?

A I --

Q In those years.

A No restrictions in overtime.

We were pieceworkers, by the box.

Q Did there come a time when there was a lock-out by the Employers?

A Yes.

Q Of the Council?

A Yes.

Q Can you recall that time?

Was it February 1, or on or about February 1, 1967?

A I would say, about that time.

Q And subsequent to that time, did you receive any notification from the Union, or Union delegates, to return to work at any of these Council shops?

A No.

Q Was that the practice, that the Union would call up and tell you which shops to report to?

A That's right.

Q And did you have any way of controlling which of those shops you would go to, at all?

Could you express a preference?

A I doubt it very much.

This is where they told you to go, and you went.

Q Was this true for pretty much everybody?

A Pretty much everybody, yes.

Q How far in advance of a given day would you know

you did receive notice that you were to go back to a Council shop, after the lock-out had ended?

A I don't remember.

I don't think I worked for a Council shop after that.

I don't remember, though, if I did or not.

Q Are you still working for the bagel -- in the bagel field now?

A I'm working two days at Bagel Den.

Q And what is the rest of your time?

A I'm a real estate broker.

MR. APPELL: I object.

Q Were you in real estate then?

MR. APPELL: I object.

MR. SISKIN: I'm sorry.

JUDGE ROSE: What's the conceivable relevance of this?

MR. SISKIN: I just want to see when he started the real estate, Your Honor.

JUDGE ROSE: Objection sustained.

MR. SISKIN: I have no further questions at this point.

JUDGE ROSE: Any cross examination?

MR. APPELL: Yes.

CROSS EXAMINATION

Q (By Mr. Appell) Mr. Todaro, to your best recollection,

MR. APPELL: At this time, I offer General Counsel's Exhibit 4 into evidence.

MR. SISKIN: I object, Your Honor

We're talking eggs and apples.

You've got included in this total, non-bagel baker employment.

If you take a look, you'll see it.

JUDGE ROSE: What's the purpose of this offer?

MR. APPELL: Well, I think it balances Respondent's 5, which has some differing amounts concerning gross back pay, and I think this should come in for what it's worth, also.

JUDGE ROSE: Let me see Respondent's 5.

(Whereupon, Mr. Appell handed Respondent's Exhibit 5 to Judge Rose.)

JUDGE ROSE: Mr. Todaro, are these two documents supposed to be the same thing, one for 1966 and one for 1967?

THE WITNESS: That's right, sir.

JUDGE ROSE: Objection overruled.

G. C. 5 will be received.

G. C. 4, I mean.

(Whereupon, the above referred to was received and marked General Counsel's Exhibit 4 in evidence.)

Q (By Mr. Appell) Do you recall any time when you

were told by any of your Employers, in '67, '68, that as a result of any Union contract, you would have to work less time?

A Not that I remember, no.

MR. APPELL: I have no further questions of this witness.

JUDGE ROSE: Anything further, Mr. Siskin?

MR. SISKIN: Yes, yes.

REDIRECT EXAMINATION

Q (By Mr. Siskin) For the year 1966, Mr. Todaro, do you see a notation on there, Bagel Bakers Union, on your gross salaries, about the tenth or eleventh one down?

A Yes.

Q How much is that amount?

A 1,239.76.

Q So, if you were asking as to what your wages earned were from the bagel shops in 1966, you'd have to exclude that, would you not?

That was not a shop, was it?

A No, that was not a shop.

Q Okay.

And if you --

A I think that was the vacation money.

Q But that was paid by the -- that would be paid by the Union, would it not be?

A Right.

Q Who was Samuel Greenspan, Mr. Todaro?

I notice him on this Social Security list.

A Who is Samuel Greenspan?

Q Yes.

A He was one of the bagel bakers.

Q Now, did you ever hear of W & S, or Throgs Neck Bagels?

A I've heard of them way back.

Q Did that sound like it was a machine shop?

A At that time, I didn't know if it was a machine shop.

I knew it was a bagel shop.

I didn't know if it was mechanized or not.

Q Did you ever see any mechanized machinery at that point in time?

A No.

MR. SISKIN: No further questions.

JUDGE ROSE: Mr. Appell?

MR. APPELL: Nothing further of this witness, Your Honor.

JUDGE ROSE: I have a question, Mr. Todaro.

This amount of money that you received in 1966, that came from the Bagel Bakers Union, you're familiar with that?

THE WITNESS: Yes.

JUDGE ROSE: Did you do some work for the Union?

THE WITNESS: No.

I think, sir, that is the vacation.

JUDGE ROSE: Tell me about that.

Where did the money come from?

THE WITNESS: The vacation money was paid in by the bosses, and we were --

JUDGE ROSE: The bosses, meaning the --

THE WITNESS: The owners of the bagel shops.

JUDGE ROSE: Okay.

THE WITNESS: And this was paid three times a year, if I'm not mistaken.

Four, five, and then three, in the amounts, which I think is the total of $12 hundred, at that time.

JUDGE ROSE: Do you know on what basis the Employers you worked for paid the money to the Union?

How much it was on a daily basis, or anything like that?

THE WITNESS: At that time, I don't remember.

JUDGE ROSE: Was it some kind of a vacation fund?

THE WITNESS: Right, a vacation fund it was.

JUDGE ROSE: But that money was not money you earned from the Union?

THE WITNESS: No.

JUDGE ROSE: It was money that --

THE WITNESS: That the Union paid out to the workers.

JUDGE ROSE: It was money that was paid by your Employers to the Union?

THE WITNESS: To the Union.

JUDGE ROSE: For the purpose of paying you?

THE WITNESS: Right.

JUDGE ROSE: On some kind of a basis, according to the -- some amount for each day you worked?

THE WITNESS: Right.

JUDGE ROSE: Okay.

Anything further of this witness?

MR. SISKIN: No, I have nothing further.

MR. APPELL: Nothing further.

JUDGE ROSE: You're excused.

Thank you very much.

(Whereupon, this witness was excused.)

JUDGE ROSE: Call your next witness.

Whereupon,

SAUL SAPADIN

called as a witness, was duly sworn and testified as follows:

JUDGE ROSE: Please be seated.

State your name and address for the record.

THE WITNESS: Saul Sapadin, 133-15 228th Street, Laurelton.

JUDGE ROSE: How do you spell your last name?

Metropolitan News was in the nature of supplemental employment, and we do not believe it should figure into the back pay computation.

Indeed, if it did, I think Mr. Sapadin would actually come out with some additional dollars.

But, this was deliberately omitted from the back pay specification.

MR. SISKIN: Counsel for Respondents does not take that position.

JUDGE ROSE: Okay, proceed.

CROSS EXAMINATION

Q (By Mr. Appell) Mr. Sapadin, after the lock-out, did you ever get an offer of reinstatement, calling you back to work, for either Flatlands or Tri-Boro?

A Flatlands.

Q Flatlands?

A Yes.

Q Do you remember when it was?

A I think I was only out about two weeks, or a week.

I don't remember. It wasn't too much. It wasn't too long. It was a short period.

Q Do you remember how you heard about this?

A Well, they told us to go back to work.

Q Who's "they?"

A The Union.

Q In any of the shops you worked in in '67 or '68, were you ever informed that your -- that any overtime or other hours, would have to be cut back?

A No.

Q In any of the shops you worked in in 1967 and '68, were there any wholesale operations, where they sold wholesale?

A Yes.

Q Do you remember if any of those wholesele operations were cut back, while you worked for these companies in 1967 and '68?

Were they cut back?

A No.

Q They were not?

A I don't remember.

Q You don't remember?

JUDGE ROSE: What is your answer?

THE WITNESS: No.

JUDGE ROSE: No, they weren't cut back; or, no, you don't remember?

THE WITNESS: I don't remember.

MR. APPELL: I have no further questions of this witness, Your Honor.

JUDGE ROSE: Mr. Siskin.

MR. SISKIN: Yes.

Q Well, the usual practice, as far as you knew it, though, as it applied to you, was you would get your routing from the Union?

Would that not be true?

A Yes.

Because I had a lot of different jobs.

Q And any reinstatement request of you, would go through the Union, isn't that correct?

A Right.

MR. SISKIN: No further questions.

MR. APPELL: I have nothing further, Your Honor.

JUDGE ROSE: Thank you very much.

You may step down.

(Whereupon, this witness was excused.)

JUDGE ROSE: Off the record.

(Discussion off the record.)

JUDGE ROSE: On the record.

MR. SISKIN: Mr. Fertel.

Whereupon,

MURRAY FERTEL

called as a witness, was duly sworn and testified as follows:

JUDGE ROSE: Be seated.

Tell the Court Reporter your name and address.

THE WITNESS: Murray Fertel.

105-59 Avenue K, Brooklyn.

JUDGE ROSE: Spell your name, please?

THE WITNESS: F-E-R-T-E-L.

DIRECT EXAMINATION

Q (By Mr. Siskin) Mr. Fertel, how long have you been in the Union?

A Oh, around twenty-three years.

Q And did there come a time when you were caught in what might have been called a lock-out, from the industry, in 1967?

A Yes.

Q And do you recall when you came back to work after that lockout?

A Not really.

Q Was it a fair thing to say that you normally worked for a lot of different shops?

A Yes.

Q Are you a baker or a kettleman?

A Baker.

Q Did there come a time when you had any selfemplpyment during the year 1966 or '67 or '68?

A Outside of this?

Q Yes.

A No. No.

Q And did you ever receive any notification from the Union to report back to any of these Council shops, after

Q (By Mr. Siskin) Now, in your own mind, was there, in any period of time, in that time, when you worked overtime, '66, '67 or '68?

A Overtime, you mean more than five days?

Q Well, what did you consider to be overtime in the industry?

A Overtime was if they needed an extra dough, another three hours of work or something like that, what I considered overtime.

Or a special order that came through. That was considered, what I would consider overtime.

Q And are you aware that, whether or not it was a Union requirement, that there be no overtime, or were there any restrictions on overtime?

A No.

In fact, as far as I know, we were always told to make it.

Q Now, was there ever any slack periods during the years '67 or '68?

A In '67, it started to fall off.

The work started to fall off.

Q How about '68?

A I went into business at the end of '67, around November, December, and lasted until about May of '68, which I went broke.

Q What kind of business was that?

A Bagel business.

Q What was the name of that Employer?

A Fertel Bagels.

Q It's not listed, though?

A I didn't make anything.

Q I see.

But when did you go into business on your own?

A Around the middle of November of '67.

Q So, is it fair to say that for those last six weeks, you worked full time for yourself, in your own business?

A You can say that.

Yes, I would say that.

Q In other words, for the last month and a half?

A Yes.

Q And during that period of time, were you operating as a corporation, or an individual?

A A corporation.

Q What was the name of that corporation?

A Fertel Bagels.

Q Where was that store located?

A On Jericho Turnpike, in Huntington Station.

Q Did you have a lease on a --

A A store?

Q -- a store?

A Yes.

Q When did you take out that lease?

What period of time did it run?

A In that time.

In, probably I signed it, maybe, October or November of '67.

Q How many people did you have working for you?

A There were no people.

Q Just yourself?

A Yes.

Q How many hours a day did you work?

A I stood there about twelve hours a day, maybe longer.

Q Was that five, six or seven days a week?

A I took off Monday.

Q Do you recall what the -- what the industry conditions were in the year 1968?

Had machine competition entered into the field?

A I don't remember any machines, but for myself to work -- when I left, the work started to go down.

They started taking away the work, and it started to go down. They started splitting it up because of the lock-out.

Q But, do you recall whether there were any severe competition coming in from some of the frozen bagels?

A Now that you mention it, the frozen ones, I think

Q What time was that?

A The end of '68.

Q I see.

Now, did there also come a time when you became an officer of that corporation?

A Yes.

Q What was your title, president?

A I think I was secretary-treasurer or something like it.

Q Who was the president?

A I think my wife.

Some corporation.

Q Was it only at that one location, Jericho Turnpike?

JUDGE ROSE: Your answer?

A Yes.

MR. SISKIN: No further questions.

JUDGE ROSE: Any cross?

MR. APPELL: Yes.

CROSS EXAMINATION

Q (By Mr. Appell) Mr. Fertel, do you remember any machines being used in any shops you worked in, in 1967 or '68?

A No.

Q Do you know of any machines being used in any other shops in those two years?

A No.

Q Your answer?

A No. I never. No.

Q Do you remember ever being told that your work hours would be cut back in 1967 or '68, because of the Union contract, or for any other reason?

A Well, the work was starting to be chopped up in the larger shops, even where I worked, because of the lock-out, and whatever else was going on.

They started to divvy it up more evenly.

Q Who's "They?"

A The Union.

Q Were you ever told that there would be less overtime or fewer hours worked?

A No.

Q Were you ever offered reinstatement by Neptune Bagel or any other Council member, after the lock-out?

A No.

Q Did the Union ever tell you to go back to work at any Council Employer?

A No.

Because if they did, I would have.

MR. APPELL: No further questions, Your Honor. Thank you.

JUDGE ROSE: Anything further of this witness?

PROCEEDINGS

HEARING OFFICER: On the record.

Whereupon,

JOSEPH MARTINOSKY

having been called as a witness, and having been first duly sworn by the Officer, was examined and testified as follows:

DIRECT EXAMINATION

Q (By Mr. Levine) State your name and address?

A Joseph Martinosky, 4847 Bell Boulevard, Bayside.

Q Mr. Martinosky, how long have you been a member of the Bagel Bakers Union?

A Since 1948.

Q During that time do you recall a period when there was a strike or a lock out which is the basis of this proceeding?

A For this?

Q Somewhere in the year 1966, '67,'68, there was some labor trouble.

A There was a lock out, yes.

Q At that time by whom was you employed?

A By Abraham Hantin.

Q That is the Bagel Box?

A Yes.

Q How longhad you been employed there?

A Well, I had been employed with -- quite a long time

HEARING OFFICER: On the record.

Q (By Mr. Levine) During the year 1966 Bagel Box had a truck running and they did quite a bit oftheir business on a wholesale basis, is that correct, sir?

A Yes.

Q Starting with February 1st, 1967, do you know whether Bagel Box had a truck running or was doing any business on a wholesale basis?

A Yes, he had.

Q Was that a member of the Teamsters Union who was driving the truck?

A I believe the boss himself was driving.

Q Do you know there was a strike by the Teamsters Union, was there not about the same time that you people had the lock out?

A I don't remember.

MR. LEVINE: That's all for this witness.

HEARING OFFICER: Cross examination.

MR. APPELL: Yes.

CROSS EXAMINATION

Q (By Mr. Appell) Mr. Martinosky, is Bagel Box still in business to your knowledge?

A Yes, sir.

Q Is there another business at the same address?

A Not that I remember.

I have seen Bagel Box written on the window.

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Q Do you work there now?

A No, I don't.

Q Did you ever hear of a company called Rodney's Bagel?

A Yes.

Q Where is that located?

A 325 South 1st Street, Williamsburgh.

Q Do you know if Rodney's is owned by Mr. Hantin also?

A Yes.

Q Do you remember when that was?

A About 1964 -- about 1947 and 1948.

HEARING OFFICER: Where are we going?

MR. APPELL: I will withdraw it.

Q (By Mr. Appell) In 1967 and '68, in your employment in the Bagel industry did you ever see the introduction of any new machines tomake bagels in any of the shops you worked in in '67 or '68?

A No.

Q Did you ever see the machine introduced in any shops at any time?

A They have them now.

Q For how many years would you say?

A Must be about three years I assume.

Q What shops have you seen them in?

A Bagel City, Bagel Wheel.

Q Were you ever toldin 1967 or '68 by the Union or anyone else that you hours at work were to be limited

to any particular numberof hours?

A No.

Q Were you ever toldby the union or anyone else that you couldn't work overtime?

A No.

Q Did the companies that you worked for in 1967, M&B and Bagel City, did they have any wholesale operations?

A Yes.

Q Do you remember any timewhen they stopped their wholesale business?

A No.

Bagel City did stop about five years back.

Q It would be after 1968?

A Yes.

Q How about M&B, did they stop their wholesale business to yourknowledge?

A I believe they stopped about two or three years ago.

Q How about Bagel Wheel, did that have a wholesale business?

A Yes.

Q Did they ever cut that back to yourknowledge?

A No.

Q After the lock out did there ever come a timewhen you were offered reinstatement to Bagel Box?

Whereupon,

GERARDO RUSSO

having been called as a witness, and having been first duly sworn by the Officer, was examined and testified as follows:

HEARING OFFICER: Please state your name and address for the record?

THE WITNESS: Gerardo Russo, 162-10 Powell Cove Boulevard, Whitestone, New York.

DIRECT EXAMINATION

Q (By Mr. Levine) Mr. Russo, how many years have you been a member of the Bagel Bakers Union?

A Since 1954.

Q During the year of 1966 what shops were you employed by?

A I was employed basically at Lee Bagels until they closed up.

Q Where are they located?

A On Northern Boulevard in Queens.

Q Who else were you employed by?

A Abraham Hantin.

Q Who else?

A Previous to Abraham Hantin, I worked in a number of other shops on given days where I was off to pick up my salary.

A Lenders Bagels I don'tthink bothered any of the shops.

Q Was it a machine shop?

A I don't know.

Q Did you ever see any of Lenders Bagels?

Could you tell whether they were machine or handcraft?

A The only bagel I saw was in the package andit is very hard to tell in the package especially with labels on it and everything.

MR. LEVINE: That's all.

HEARING OFFICER: Any cross examination?

MR. APPELL: Yes.

CROSS EXAMINATION

Q (By Mr. Appell) Mr. Russo, was there ever a time after the lock out began that Bagel Box asked you to come back to work?

A No.

Q Was there ever a time when the union told you you could go back to work to Bagel Box after the lock out started?

A They said if we can we would but we didn't.

We went in and asked to go back and they wouldn't accept us.

Q You said if we went they would, who is they?

A Our officials.

I really don't know about the others.

The one I am working by the Turnpike, since then it still has it.

Q How about the others, do you know?

A No, I don't.

Q Do you have any knowledge of any of them cutting out wholesale?

A Not that I know of.

Q Was there ever a time when the union told you that you would be restricted in the number of overtime hours you could work?

A No.

Q Did there ever come a time in '67 or '68 when the union indicated to you in any way that the number of hours you worked or the amount of production that you personally put out would have to be limited?

A The only limitation was on jobs where we were going to get the work, what shops were available to work in.

Q Once you had a job in a shop you were told that you couldn't put out more than so many boxes a day?

A No.

I have worked around the clock so it never phased me.

Q How many days a week did you work in '66, do you remember?

A I would say I worked six or seven days a week.

Q How about '67, that would be the year of the lock out?

A I worked seven days a week.

Q How about '68?

A I worked three by the Turnpike and wherever else I could grab it by Heampstead or wherever it was.

Q Did you work about four days a week in '68?

A Yes, until I got the steady job by the Turnpike which I don't remember the date.

Q You don't remember the date you started at the Turnpike?

A No.

It was right after the lock out.

I worked three days there.

A little after that I worked to the end of the year.

Q If I told you that in '68 for the first nine months you made about $11,000, would that refresh your recollection when you started there in '68 steadily?

A No, I couldn't answer that because the three days that I worked I worked around the clock.

HEARING OFFICER: What difference does it make?

MR. APPELL: I am trying to show there was available work in the bakery.

I'm trying to show this witness was steadily employed and there was no cut back in the industry.

HEARING OFFICER: Was there any contest about that?

shops or all the shops in town have machines now?

MR. LEVINE: I withdraw the question.

That's all.

MR. APPELL: I have no further questions.

HEARING OFFICER: Thank you very much.

You are excused.

Call your next witness.

MR. LEVINE: I call Mr. Ber Barth.

Whereupon,

BER BARTH

having been called as a witness, and having been first duly sworn by the Officer, was examined and testified as follows:

HEARING OFFICER: State your name and address for the record.

THE WITNESS: My name is Ber Barth.

I live at 19237 Santa Rita Street, Tarzana, California.

DIRECT EXAMINATION

Q (By Mr. Siskin) How long have you been in the union?

A Since 1940.

Q Were you a baker or a kettleman?

A A baker.

Q Prior to the incident of the lock out, did you work full-time for the Bagel Bakery concerns?

A Yes.

Q What was your normal work week prior to the lock out?

A I used to put in about 16 hours a week.

I put in the equivalent of 16 days work in four or five days.

Q Where did you live during this time?

A I lived --

MR. APPELL: I object.

What is the difference where he lived?

MR. SISKIN: It has something to do, Your Honor, with his availability for work during this period of time and will be important, both in the base period and the subsequent period.

HEARING OFFICER: Where he lived?

MR. SISKIN: Yes.

There is a travel time situation and in fact one of the findings reflect in some of the other cases that individuals didn't want to travel because of the distance.

HEARING OFFICER: If you can get testimony that he didn't want to work that is one thing.

Where precisely he lives I think it is totally irrelevant and I will sustain the objection.

Q How long did it take you to get to your work?

A It depended on where I worked.

I was always available for work and I worked in every shop that had work, wherever they would send me I would go.

MR. APPELL: I object.

HEARING OFFICER: Mr. Siskin, what is the relevance of that?

MR. SISKIN: It is during the back pay period of time, September of '68 is part of it.

HEARING OFFICER: Any earnings he had in the back pay period is relevant.

Overruled.

Q What was the name of the business you went into?

A The car wash business.

Q When did you go into the car wash business?

A November of '68.

Q What did you do from July of '68 to November of '68?

A I was looking for a business.

Q Where was that?

A In California.

Q Did you sign a lease during that period of time?

A In November.

MR. SISKIN: I have no further questions at this time.

HEARING OFFICER: Do you have anything of this witness?

MR. APPELL: Yes.

CROSS EXAMINATION

Q (By Mr. Appell) Mr. Barth, you testified you believed conditions changed in '67 because more shops were not allowing

still when you left their employ?

A Yes.

Q Did the union ever inform you in '67 or '68 that they had put in a contract in a limitation on how much time you could work or how many boxes you could put out?

A No.

Q Did the union ever tell you there was any kind of limitation at all for any reason on the number of boxes you could put out?

A No.

Q Do you remember the date that you actually stopped working in '68 in the bagel industry?

A The exact date, no, but it was sometime in July.

Q Do you remember if it was the beginning of the month or the middle of the month or the end of the month?

A The end of the month.

Q Do you recall going to Culver Bakery in February '68 to try to get work back?

A Very distinctly.

Q Do you remember the exact date?

A No, but I recall the incident.

Q With whom did you go, with anyone?

A By myself.

Q Do you remember what time of the day it was?

A It was in the evening.

Nobody ever directly told me that it does or it doesn't have an impact.

This is a conclusion that I came to and this is the reason I think it was stopped.

Q How many years have you worked in the bagel industry?

A 40 years.

I was 28 years with the union and I belonged to the union on an affiliate basis before that with the Pretzel Bakers.

MR. APPELL: No further questions, Your Honor.

MR. SISKIN: Nothing further.

HEARING OFFICER: You are excused.

Thank you.

We will take a 10 minute recess.

HEARING OFFICER: Call your next witness.

MR. SISKIN: I call Isak Jakubowicz.

Whereupon,

ISAK JAKUBOWICZ

having been called as a witness, and having been first duly sworn by the Officer, was examined and testified as follows:

HEARING OFFICER: State your name and address?

THE WITNESS: Isak Jakubowicz.

DIRECT EXAMINATION

Q (By Mr. Siskin) Did there come a time when you

experienced a lock out in the bagel industry?

A Yes.

Q That was in the year 1967, correct?

A Starting in '66-'67, yes.

Q Did there come a time when you returned to council shops?

A There was no return.

How can you return if they chased you out.

Q After the lock out ended?

A No, not such a thing.

Q Who told you were to find jobs on a given day?

Was it the union?

A At that time it was the union.

Q The management of the council members never had any means of telling you which shops to work, did they?

A No.

Q Did you work full-time in the industry, the bagel industry in 1966?

A All my life I work there, yes.

Q Can you tell us what the custom was for the defining overtime or extra work?

A There was no overtime in our industry.

Q Do you recall whether the union contract provided for a limitation on overtime?

A There was no limitation.

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P R O C E E D I N G S

JUDGE ROSE: On the record.

MR. SISKIN: At this point, counsel for the Respondent, requests the Court to exclude those witnesses that are not testifying presently and who will be testifying in a given point in time today or in future days, from the hearing room, and to allow only the witness that is testifying and counsel, of course, to be present.

JUDGE ROSE: Does your request include all of the employers members of Bagel Bakers Council?

MR. SISKIN: We are willing to do that, your Honor.

JUDGE ROSE: Your request is denied, because I consider all of these parties are parties included in this proceeding, and I don't feel that it's appropriate.

You may proceed, Mr. Siskin.

MR. SISKIN: Exception.

Mr. Leon Lifshutz, please.

JUDGE ROSE: Come up here, Mr. Lifshutz.

Whereupon,

LEON LIFSHUTZ

called as a witness, having been first duly sworn in by Judge Rose, was examined and testified as follows:

JUDGE ROSE: Please sit down there and give your name and address to the Reporter.

THE WITNESS: Leon Lifshutz, L-i-f-s-h-u-t-z, 57-19

255th Street, Little Neck, New York 11362.

DIRECT EXAMINATION

Q (By Mr. Siskin) Mr. Lifshutz, how long have you been a member of Bagel Bakers Union?

A Since July, 1948.

Q And do you recall a point in time in 1967 when Council members that are Respondents herein, were accused of a lock-out?

A Yes.

Q Would that date be February 1, 1967?

A Beg your pardon?

Q Would that be on or about February 1, 1967?

A Yes.

Q And following the lock-out, did you attach yourself to one particular shop or one particular store at a -- at a major employer?

A From April of 1967, yes, sir.

Q And was that Bagel shop called International?

A Correct.

Q And did you work full time for that shop?

A As many days as I could get there, yes.

Q Did that include anything that might be characterized as overtime?

A Well, a day's work, overtime can be interpreted in many different ways.

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The contract called for a 100 boxes at a time.

If you worked and made a 100 and ten, that would be considered overtime.

Q And would you say that you made over the 100 boxes almost everyday during the time --

A Yes.

Q -- during the time that you worked for International?

A Yes, that is correct.

Q Now, did there come a time when you came back to work for a Council shop, after the lock-out?

A Not after the lock-out.

In the end of 1967, I opened my own shop.

Q Well, does it -- is it fair to say that you then attached yourself to another major shop until the end of 1967?

A No, then I opened my own bakery.

Q When did you open your own bakery up?

A In the end of 1967.

Q What was the name of that bakery?

A Triple L Bagels, Inc.

Q And where was that store located?

A 4606 Linden Boulevard, Brooklyn, New York.

Q And did you have a lease on that store?

A Yes.

Q And when was that lease taken out?

When did you obtain that lease? For that store?

A December, 1967.

Q And is that corporation still in existence?

A No, sir.

Q How long did that store last?

A Two and a half years.

Q Do you have copies of those tax returns here?

A Well, what they don't have, I have.

Q May I have those corporation returns?

A No, I don't have those.

My lawyer had those and he died, and I can't get them. I don't know where they are.

Q What was the date of incorporation of that corporation?

A I think that it was in December of '67.

Q I see.

And would you say, from December of 1967 you worked full time in the Triple L shop?

A Yes, sir -- no, from January of '68.

Q Correction, from January of '68 --

A Yes.

Q -- you worked full time?

A Yes.

Q Did you employ any people besides yourself?

A I had two partners.

Q I see.

witness at this point.

JUDGE ROSE: Any cross examination?

MR. APPELL: Yes.

CROSS EXAMINATION

Q (By Mr. Appell) Mr. Lifshutz, after you worked for for Far Rockaway Bagels before the lock-out, did Far Rockaway ever offer you your job back again after the lock-out started?

A No.

Q Did any member of the Bagel Bakers Council offer you work after the lock-out started?

A None offerred, two refused.

MR. SISKIN: Objection.

The witness never testified that the offers did not come from management, they came from the union.

JUDGE ROSE: The objection is overruled.

Q What is your answer on that?

A No Council member offerred me employment.

Two Council members rejected me.

Q Which ones were they?

A One was the Oasis Bagel Bakery, Harding Boulevard, the other was Pop's Bagel in Hewlett, I think that it is.

Q Now, when did you make an application to those companies?

A I went down and requested employment.

work at a Council member employer?

A No, sir.

JUDGE ROSE: Let's keep it quiet in the back, please.

Q Now, in the year 1967 or '68, were you ever instructed by any employer that you worked for that there was a restriction on overtime?

A Never.

Q Were you ever informed by your employers in those years that there was a restriction on the amount of work that you could put out?

A Never.

Q Were you ever advised by anyone in those two years that there was such a restriction on overtime hours or on production in the union contract?

A Never.

Q And to your knowledge, was there any such cut back of hours or production that you were ordered to observe in those years?

A Never.

Q Now, you worked at International and Coney Island in the year 1967, is that correct?

A Yes.

Q Did either of those shops have machines at anytime?

A Yes.

Q In '67 or '68?

Q Are you receiving a pension now?

A No, sir.

MR. APPELL: Objection.

Q Are you employed now?

A Yes, sir.

Q In the bagel industry?

MR. APPELL: Objection.

JUDGE ROSE: Mr. Siskin, what difference does it make?

MR. SISKIN: Well, this goes with respect to the availability of employment, your Honor.

JUDGE ROSE: Sustained.

MR. SISKIN: No further questions.

JUDGE ROSE: You're excused, Mr. Lifshutz.

THE WITNESS: Thank you.

(Witness excused.)

JUDGE ROSE: Off the record.

(Whereupon, a recess was taken.)

JUDGE ROSE: On the record.

MR. SISKIN: Mr. Breier.

JUDGE ROSE: Raise your right hand.

Whereupon,

RALPH BREIER

called as a witness, having been first duly sworn in by Judge Rose, was examined and testified as follows:

JUDGE ROSE: Please be seated.

State your name and address for the record.

THE WITNESS: Ralph Breier, B-r-e-i-e-r, 70-24 165th Street, Flushing, New York 13365.

DIRECT EXAMINATION

Q (By Mr. Siskin) Mr Breier, did there come a time when you were in the middle of a bagel council walk-out?

A Yes, sir.

Q Can you pinpoint that point in time?

Was that February -- on or about February 1, 1967?

A Yes, sir.

Q And prior to that time, who had you been employed by?

Principally as a principal employer, immediately preceding that time?

A Tri-Boro Bagel Company.

Q Do you ever recall returning to work, following the lock-out, to Tri-Boro?

A No, sir.

Q Do you ever recall returning to work to any Council member --

A No.

Q -- following the lock-out?

A No.

Q Following the lock-out, did you work predominently for one bagel shop?

A Following the lock-out, in January of '66, I was elected

days a week --

A One day a week.

Those were the days that I said it was one day a week in each month, one day in January -- four -- three days in Jauary --

Q Okay.

Were the days that you gave totals for, how much that you worked in one month or were those how many days per week?

A That was one day per week for International, the days that I gave.

Q I see.

A And I have the total amount of boxes that I produced also for each day that I worked.

MR. APPELL: May we go off the record,your Honor?

JUDGE ROSE: Okay, off the record.

(Discussion off the record.)

JUDGE ROSE: On the record.

Q (By Mr. Appell) Mr. Breier, were you aware of, in any of the shops that you worked in in 1967 or '68, or in any other shops that you were familiar with, were you aware of any restriction on overtime?

A No.

Q Were you aware of any restriction in either of the shops that you worked or any other shops that you were

familiar with, were you aware of any restriction with respect to the amount of bagels that an employee would be allowed to put out in a given day or week?

A No.

Q To your knowledge, in any shops that you were familiar with, did, in fact, any restrictions take effect in '67 or '68?

A No.

Q Did any of the shops at which you worked in 1967 have any wholesale accounts?

A '67?

Q Or '68.

A All of them.

Every shop that I worked in had wholesale accounts.

Q Now, do you have any knowledge of any cut backs, in the shops that you worked in, or the shops with which you were familiar with, any cut backs in the wholesale operations in any of those shops?

A Not to my knowledge.

Q Do you have any knowledge of any machines, for the purpose of making bagels, being introduced in any shops that you worked in or any other shops at which you were familiar, in the year 1967 or '68?

A No.

Q Did you have any idea if there came a time when machines were introduced at all in the industry?

Q Well, wouldn't you know about it?

A I wouldn't know, I was not an officer at that time.

Q Well, that would be in the year of 19[illegible]7 or '[illegible]8, wouldn't it?

A I was an officer up until December of '[illegible]7.

If subsequently any employees worked after that period, I was not aware of them, and I have no records of it.

Q So that if in fact employees did go back to work for the Council shops in 19[illegible]8, you would not have been aware of that, is that correct?

A Yes.

MR. SISKIN: I have no further questions.

JUDGE ROSE: Mr. Appell?

RECROSS EXAMINATION

Q (By Mr. Appell) To your knowledge, the restriction in the contract that Mr. Siskin showed you, were they lived up to?

A As far as I know.

Q They were or they were not?

A What do you mean,restrictions?

Q On overtime where it said that you couldn't work overtime?

A Well, if I produced [illegible]00 boxes in one day, I would say

that I produced a considerable amount of overtime, and almost everyday that I worked, I worked overtime, based on the contract, which was for a minimum of 10[illegible] boxes per day, so --

Q So as far as you know, no restriction of overtime was lived up to in '67 or '68?

A Yes, that's right.

The minimum days' pay was for 100 boxes, and every shop that I worked in, I produced over 100 boxes and got paid accordingly.

If the rate was 25 cents a box, I got 2[illegible] dollars for the hundred and 2[illegible] cents for every box over a 100.

MR. APPELL: I have no further questions.

Q (By Mr. Siskin) Now, do you recall a time when there were special union meetings arranged with respect to the frozen bagels?

A I don't remember.

Q Do you recall a time when management petitioned the union with respect to the frozen bagels?

A Possibly, but I don't recall it.

I can't give you any specific dates, if you are asking that, or times or places.

Q Was it many members of management that petitioned that, do you recall?

A No.

Q -- am I correct?

A Yes.

MR. SISKIN: I have no further questions of this witness.

MR. APPELL: I have none.

JUDGE ROSE: You're excused.

THE WITNESS: Your Honor, before I step down, I would like to ask something of you.

For the amount of money that is claimed by the figure that Mr.Appell told me that I have a claim for, I would like to know if that includes holiday and vacation pay also for that period.

JUDGE ROSE: I would like to know that, too, Mr. Breier.

Mr. Appell, is the holiday and vacation pay figured into the base year?

MR. APPELL: I don't believe so, your Honor.

I would have to check.

JUDGE ROSE: Because the records --

MR. APPELL: I don't believe so.

JUDGE ROSE: Shouldn't it be?

MR. APPELL: It's a good question.

Could we go off the record.

JUDGE ROSE: Okay,off the record.

(Discussion off the record.)

Whereupon,

SAMUEL CUTLER

called as a witness, having been first duly sworn in by Judge Rose was examined and testified as follows:

JUDGE ROSE: Please be seated.

State your name and address for the record.

Tell the Court Reporter your name and address?

THE WITNESS: I can't hear you.

JUDGE ROSE: Tell the Court Reporter your name and your address.

THE WITNESS: Samuel Cutler, 137-42 Miami Beach, Florida.

DIRECT EXAMINATION

Q (By Mr. Siskin) Mr. Cutler, how long have you been in the union?

A About 38 years.

Q Have you ever been an officer of the Union?

A No.

Q Did there come a time when the Council, Bagel Bakers Council engaged in a lock-out?

A Yes.

Q Do you recall that time?

A Yes.

Q Was that on or about February 1, 1967?

A Yes February, right.

JUDGE ROSE: Very well.

CROSS EXAMINATION

Q (By Mr. Clark) Mr. Cutler, after the lock-out in 1967, were you ever offerred your job back by Far Rockaway Bagels?

You will have to say your answer, you just can't shake your head.

A No, no.

Q Okay.

Did -- after the lock-out, after the lock-out in 1967, did any -- any members of the Bagel Bakers Council offer you employment?

A No.

Q After the lock-out began in 1967, did the -- did the union advise you or tell you to go back to work for any of the Council members?

A No.

Q You did work -- withdrawn.

In 1967 and 1968, you did work for Bagel Bakers who were not members of the Council, is that correct?

A Yes.

Q And during the time that you worked in those bagel baking facilities, was there any reduction in work hours or any limitation of work hours imposed by the employer?

A No.

JUDGE ROSE: Mr. Clark, are you getting ready to launch into a long line of inquiry concerning which the other counsel for the General Counsel has already interrogated all of the other witnesses?

MR. CLARK: Yes.

JUDGE ROSE: All right.

Tell me, at this time, what do you intend to elicit from this witness that will not be cumulative?

MR. CLARK: Your Honor, I believe that since this witness worked in different shops than the prior witnesses or subsequent witnesses, his testimony would not be cumulative, but rather, would be a further showing of the work in the industry during '67, '68 when the Respondent is -- is anticipated -- when it's anticipated that Respondent will show that there was a reduction of work and that, therefore, the discriminatory, that they would not be reinstated.

It's important to show the aggregate of demand or work available in the bagel baking industry during this period, so as to meet Respondent's position.

JUDGE ROSE: Well, I remind you, Mr. Clark, that I have heard all of the evidence that would be appropriate at this point in time on that point, particularly in view

of the fact that there's been no evidence offerred by the Respondent concerning this point at this time.

MR. CLARK: Your Honor --

JUDGE ROSE: I consider this line of inquiry to be cumulative, and, therefore, I'm going to sustain my own objection.

MR. CLARK: Your Honor, if I may just be heard on the last point.

At this time, we anticipate that our only evidence may be the testimony of the individuals who are employed in the industry and to recall them on rebuttal testimony, considering many of them are here from states outside of the state of New York, would be unduly time consuming and expensive.

I would ask to pursue this line of inquiry while we have the witnesses here.

JUDGE ROSE: No, I'm not going to allow it.

MR. CLARK: Your Honor, you would consider our example here to be an adequate offer of proof on this?

JUDGE ROSE: Yes.

MR. CLARK: Thank you.

Further, we anticipate that the further discriminatories to ask the same questions, we have a --

JUDGE ROSE: As to each of those questions, you can make an offer of proof that if allowed to testify, they would testify the same.

MR. CLARK: Do you want it now or later?

JUDGE ROSE: You could do it now.

MR. CLARK: Then I will make that offer now, that if allowed to testify, each of the discriminatories would testify that there was no reduction of work or limitation of work available to them in the shops that they worked during '67 and '68, that there was no restriction on the overtime available to them, that there was no loss of wholesale customers to bakers where they worked.

That machines were not substantially or in use — withdrawn.

That machines for making bagels were not in use in those shops during '67 and '68.

MR. SISKIN: I'm going to most definitely oppose any such offer of proof, your Honor.

This has not been the weight of the evidence.

Moreover, I feel that it's inappropriate at this time of General Counsel's showing such proof, preempting our arguments.

JUDGE ROSE: Well, I'm going to overrule your objection.

I think that Mr. Clark's statement is a fair summary of what has been testified to by other witnesses.

MR. SISKIN: I take issue of that, your Honor.

I believe that there have been substantial testimony

from witnesses who testified just to the contrary.

MR. CLARK: Well, your Honor, I'm somewhat at a loss.

I'm referring to the discriminatories that have testified.

If there are other witnesses --

MR. SISKIN: I'm alluding to the same discriminatories.

JUDGE ROSE: All right.

Let's go forward, shall we?

MR. CLARK: Yes.

Q. (By Mr. Clark) Mr. Cutler, in 1966, the year before the lock-out, did you receive vacation or holiday pay from the union fund?

A No, I don't remember.

Q You don't recall?

A I don't remember.

Q During 1967, the year in which the lock-out began, do you recall if you received any holiday or vacation pay from the union fund during that year or for that year?

A I don't.

Q Concerning 1968, did you receive any holiday or vacation pay from the union fund?

A I don't remember.

Q You do not recall that either?

A No.

Q Mr. Cutler, I'm showing you --

You are excused, Mr.Cutler.

You may take those returns with you.

(Witness excused.)

JUDGE ROSE: We'll be in recess for five minutes.

(Whereupon, a recess was taken.)

JUDGE ROSE: Let's go on the record.

Call your next witness.

MR. CLARK: Jack Ostrofsky.

JUDGE ROSE: Raise your right hand.

Whereupon,

JACK OSTROFSKY

called as a witness, having been first duly sworn in by Judge Rose, was examined and testified as follows:

JUDGE ROSE: Please be seated.

State your name and spell it and give your address.

THE WITNESS: Jack Ostrofsky, O-s-t-r-o-f-s-k-y, 3744 Jacqueline, J-a-c-q-u-e-l-i-n-e, Bethpage, New York 11714.

DIRECT EXAMINATION

Q (By Mr. Siskin) Mr. Ostrofsky, --

A Yes.

Q -- did you ever hold any title as an officer or executive with the union?

A Executive board member.

Q How long have you been an executive board member?

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boxes that were produced for both '66 and '67?

A Yes.

Q So that in effect, any wage difference would have to have been by virtue of the fact that there were fewer boxes produced?

A Yes.

MR. SISKIN: Do you have the credits for this witness?

MR.CLARK: This is what we have, and we had some sort of sub-chapter S forms.

(Mr. Clark handing documents to Mr.Siskin.)

Q Did you have a business of your own at that time?

A 1967, yes.

Q What was the name of that business?

A JAD Bakeries Incorporated and DNJ Bakeries Incorporated.

Q Do you have the corporation tax returns for those companies here?

A Yes.

MR.CLARK: I think that we have them.

THE WITNESS: Yes.

MR.CLARK: We have copies of them.

(Mr. Clark handing documents to Mr. Siskin.)

MR. CLARK: May the record reflect, your Honor, that General Counsel has provided an individual 1040 for 1966, '68, and Social Security records and 1967 sub-

Chapter S -- I believe that they are sub-Chapter S returns.

JUDGE ROSE: Very well.

Q (By Mr. Siskin) Now, were you one of the principals in those two companies known as DA --

A DAJ.

Q -- DAJ Bakeries and JAD Bakeries?

A Yes, I was.

Q Were you an officer of those companies?

A Yes.

Q Were you a stockholder of those companies?

A Yes.

Q What was your percentage ownership?

A One-third.

Q And where were those stores located?

A One was located in Baldwin, and one was located in Jericho.

Q And did you work full time at those stores?

A Yes.

Q What was the period of time that you worked full time?

A From October of 1967.

Q Until?

A The present time.

Q I see.

Did you have any other employment during that period

of time?

A No.

Q And what was your regular weekly rate of pay during that period of time?

A I don't remember offhand for that period of time.

Q Pardon?

A I don't remember offhand for that period of time.

Q And did those companies show profit allocations that were credited to you at the end of their fiscal years?

A No.

Q Well, I'm going to ask you to identify these photocopies of these returns.

Are these copies --

(Handing documents to witness.)

MR. CLARK: Have them marked.

A Yes, they are.

MR. SISKIN: I will have those marked.

(Whereupon, documents referred to were marked Respondent's Exhibits 11 and 12 respectively for identification.)

Q Were these prepared by your accountants?

A Yes, they were.

Q And they reflect your payroll as an officer as well as other information, do they not?

A Yes, they do.

Q Did you move any machinery in?

A No.

The people that we hired did.

Q When did you open the shops?

A JAD opened in October of 1968.

DAJ opened in December of '67.

Q And from -- is it fair to say that from that point on, you became a full time employer of both of those companies?

A From October of '67 I became a full time employer?

Q For both?

A In October '67, that's when JAD opened.

Q What was that, October 1st of '67?

A No, it was mid October.

Q Did you do selling or production work for those companies?

A I don't understand your question.

MR. CLARK: Objection, your Honor.

Q Were you doing --

JUDGE ROSE: Wait, you have an objection.

MR.CLARK: Yes.

JUDGE ROSE: Overruled.

Proceed.

Q Did you do selling or production work for these companies during that -- during the time that you became

an employee?

A I did both.

Q Was that true for the entire period of time represented by these tax returns?

A Yes.

Q Was that true of your co-employee, Mr. Siegel, too?

A Yes.

Q And were these shops council shops -- were these shops union shops?

A Yes.

Q These were union shops?

A Yes.

Q During this period of time?

A Yes, that's right.

Q Were these predominently retail shops?

A Both.

JUDGE ROSE: Both what?

THE WITNESS: Both wholesale and retail.

One shop, JAD.

Q And how about DAJ?

A It was not open at the time.

Q Well, I'm talking about for the period November, '67 through October, '68, wasn't that open?

A No, that was not a wholesale shop.

Q That was a retail shop?

A Yes, DAJ.

Q Were you delivering to any of the customers of your former employers during this period of time?

MR. CLARK: Objection, your Honor.

A I don't know who my prior employers --

JUDGE ROSE: Just a minute, there's an objection.

THE WITNESS: I'm sorry.

JUDGE ROSE: Mr. Siskin?

MR. SISKIN: Yes.

The relevance of this, your Honor, is as to the financial ability of our people to operate and the loss of customers by our people which is an affirmative defense in this case.

As I understand it, your Honor, these are my witnesses.

JUDGE ROSE: They are your witnesses, but I'm really confused about that, Mr. Siskin.

Your people weren't locked out, they stopped business, right?

MR. SISKIN: Yes.

JUDGE ROSE: That's -- the reason that we are here is because the Board in the 2nd Circuit found that to be the case.

They stopped working, they shut down.

Of course, they didn't have any business because they

JUDGE ROSE: Mr. Clark?

MR. CLARK: Yes.

CROSS EXAMINATION

Q (By Mr. Clark) Mr. Ostrofsky, after the lock-out began in February of 1967, were you ever offerred your job back with Island Bagel Bakers?

A No.

Q How about with Flatlands?

A I beg your pardon?

Q How about with Flatlands?

Did they ever offer you your job back?

A I never worked for Flatlands.

Q All right.

Did any other members of the Bagel Bakers Council ever offer you employment after the lock-out began?

A No.

Q At anytime, did the union ever advise you to return to work with your former — with Island Park?

A Not really, no.

Q Did the union ever advise you or tell you to return to work with any other member of the Bagel Bakers Council, again dating from the time of the lock-out on?

A It's like a double answer I could give for this one.

Q Well, whatever is the answer.

out.

Could you recall precisely when that was, what month, what day?

A Oh, no, I would never remember that.

Q Do you remember if it was early in the lock-out period or late in the lock-out period?

A I think that it was later im the lock-out period, not that much later, but a little later.

Q And had Flatlands settled with the union at that time?

A If they hadn't, I wouldn't have been working there.

Q But it was your understanding that Flatlands had settled with the union?

A Yes, that was my understanding, yes.

Q Mr. Ostrofsky, do you recall -- do you recall in -- whether in 1966 you received any vacation or holiday pay from the union fund?

A Yes, we did.

Q Now, in 1967, did you receive any holiday or vacation pay from the union fund?

A Yes, I did.

Q And do you know what basis those -- withdrawn.

Those payments that you received in 1967, they were based, is it true, that they were based on contributions from employers who had collective bargaining agreements with

the union?

A Yes.

Q And -- and during 1967, you worked for a member -- in addition to those Bagel Bakers in which you had an interest in, in addition to those, you worked for other bagel bakers in 1967, is that correct?

A No.

Q You worked for others during 1967?

A Prior to my own?

Q Prior to opening up your own shops?

A Yes.

Q And were these -- were the employees in those bagel bakeries represented by the bagel bakers union? These were union shops?

A Yes.

Q They were covered by a collective bargaining --

A Yes.

Q And those employees made contributions --

A Yes.

Q -- to the vacation and holiday fund?

A Yes, they did.

Q So that during the time you were not employed -- during the time that you were out of work from the Council shops because of the lock-out, you were working for and receiving the vacation and holiday benefits from the union

started, and well, that's what happened, that's why I went back to school.

Q And when did you get your diploma?

A That, I'm not sure, because they mailed it to me, you know, and again, I'm not a hundred percent sure.

Q After you got your diploma, didn't you go to work for you Dad?

A Yes, I believe so.

Q Now, does that refresh your recollection as about the time that you got your diploma, didn't you --

A Again, everything is really fuzzy, you know, so many things that really happened.

Q Do you recall the situation in the industry at that particular time that you left to go to school?

A No.

Q No?

A I just knew that there was a lot of trouble going on, being that my father was an executive board member.

MR. SISKIN: I have no further questions.

THE WITNESS: Well --

JUDGE ROSE: Mr. Clark, do you have any questions?

MR. CLARK: Yes.

CROSS EXAMINATION

Q (By Mr. Clark) Mr. Ostrofsky, during the time that you were working as a member of the union and working

talking to the boss yourself and getting it on your own?

A Yes.

Q You did?

A Yes.

Q And how did that come about?

Did you have to call the union delegate first or did he contact you because your name was on an out-of-work list or what?

A He called me because my name was on the out-of-work list.

Q So in the ordinary course, when you wanted a job, the union contacted you?

A Yes.

Q You would make no particular effort to go to the union?

A Yes.

Q So you were in school from sometime early in '67 until sometime in the early fall of 1967, is that correct?

A Yes.

Q Now, you said that you couldn't recall when you got your diploma, because it was mailed to you?

A Yes.

Q I take it that you were not present when they were given out?

A No, there was no formal ceremony.

It was during the summer.

Q Now, do you recall when the end of your last class day was, when it was?

A I really have no idea.

Q Do you have any recollection of what month it was?

A It was August.

Q Your last class day was sometime in August?

A Yes, late August, yes.

Q Now, you got out of your last class day sometime in late August, 1967 --

A Yes.

Q -- you went to work for your father, when, in August, 1967?

A Yes, I believe so.

Q Early on when he was first starting the shop, is that correct?

A Yes.

Q Between August and October, did you work for any other employer?

A Yes.

Q Do you recall who that was?

A They mentioned the bakery before.

It was the -- it's the one in Hempstead.

Q Hempstead Bakery?

A I don't remember.

Yes, Hempstead Bakery.

Q And that was between the time -- all right, between the time that you left school and the time that you started with your father?

A Yes.

Q And that would have been in 1967?

A Yes.

Q Did you go directly from Hempstead Bakery to your father's bakery, or was there another one during that time?

A No.

I believe that I went right to my father's bakery.

Q Okay.

Now, after the lock-out began in February of 1967, were you ever offerred your job back by Island Bakery?

A No.

Q Were you ever offerred your -- a job by any member of the Bagel Bakers Council?

A No.

Q At anytime after the lock-out began, did the union advise you to go back to Island Bakery?

A I beg your pardon?

Q At anytime after the lockout began did the union advise you to go back to Island Bakery?

A I don't believe so, no.

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Q After the lock-out began, did the union advise you to go to any other bakery for work?

A Yes.

Work was available for kettleman position and I remember working, you know, a spot here and a spot there, but I couldn't give you any answer on that.

They were union shops, though.

Q Pardon me?

A They were union shops.

Q You were working for a union shop in 1966?

A Yes.

Q And do you recall -- and you did receive vacation and holiday benefits?

A Yes.

Q And do you know what the total amount of those benefits were?

A No.

Q Similarly were the vacation and holiday benefits in 1967, did you receive any for that year from the union fund?

A I really don't remember.

Q And '68, 1968?

A Again, I don't remember.

Q When you were working in 1966, were you working full time?

A Yes.

Q And in August -- from late August of '67 on, you were working full time then?

A Is that the time that I was in school?

Q I mean after?

A After, yes.

Q After you had left school?

A Yes.

Q And finally graduated, finished your course, you were then working again full time?

A Yes.

MR. CLARK: I have nothing further, your Honor.

JUDGE ROSE: Mr. Siskin?

MR. SISKIN: Yes.

REDIRECT EXAMINATION

Q (By Mr. Siskin) You mentioned "counterman". Counterman didn't go through the union?

A No.

Q So to the extent that any of your testimony related to counterman, that had nothing to do with the union?

A Yes, that's right.

MR. SISKIN: I have no further questions.

MR. CLARK: Could I have the last questions and answers read back, please.

I didn't follow that at all.

Whereupon,

SHELDON HEPNER

called as a witness, having been previously sworn, was examinaed and testified as follows:

CONTINUED DIRECT EXAMINATION

Q (By Mr. Siskin) Mr. Hepner, did you return today to bring a copy of your tax returns for the years '66, '67 and '68?

A Right. I did.

Q And refreshing our recollection as to where we had ended yesterday, including my own recollection, were we discussing your employment for Edward Melnick?

A Right.

Q For the year 1968?

A Right.

Q And at that time, had you indicated that you possibly might have made more than the $2,450.00 shown on your Appendix 14-A for 1968?

A Right.

Q All right.

Are you now willing to correct that amount?

A Right.

I can go and refresh my memory now.

I had said I wasn't available for work in 1967. I had my years mixed up.

A Approximately September.

I can't give you a definite answer. Approximate.

MR. SISKIN: I have no further questions of this witness.

JUDGE ROSE: Anything further of this witness, Mr. Appell?

MR. APPELL: May I have a moment, Your Honor?

(Whereupon, there was a short pause taken in the hearing.)

CROSS EXAMINATION

Q (By Mr. Appell) Mr. Hepner, did you have any vacation monies coming to you in '67 or '68, from the Union?

Did you receive any monies?

A Give me a moment.

(Whereupon, the witness peruses document.)

A Yes, I did.

In 1967, I have it here.

Q How much did you receive?

A Eighty-eight fifty.

Q Eighty-eight --

A -- fifty.

Q $88.50?

A $88.50 in 1967.

Q How much in 1966?

Did you receive any in that year?

A $590.06.

Q $591.06?

A Right.

Q Did you receive any in 1968?

A I don't believe so.

I don't have it on record.

MR. APPELL: One moment, Your Honor, please, with regard to what he's owed.

(Whereupon, there was a short pause taken in the hearing.)

JUDGE ROSE: Do you have any more questions of the witness?

MR. APPELL: No, Your Honor.

JUDGE ROSE: Okay, then let's excuse him.

MR. APPELL: I do have.

Q (By Mr. Appell) Mr. Hepner, are you certain now, at this time, that you did not go out west in 1967?

A No.

It was '68.

Q You're sure of that?

A Positive.

Q Can you pin down the best of your recollection, when it was in 1968, that you went away?

A It was just about the end of the year.

Around September-time.

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Q Did you ever submit any indication to the National Labor Relations Board, that you were out of the labor market for that period of time?

A It's possible, but I was not sure until I checked my records.

Q Do you recall whether you did submit that to the National Labor Relations Board, that you were out of the labor market for 1967?

A I said I was out of the labor market.

I didn't recall what year it was.

Now I'm positive it was 1968.

Q When did you say that?

A I don't know.

MR. SISKIN: No further questions.

JUDGE ROSE: Anything further?

MR. APPELL: No, Your Honor.

JUDGE ROSE: You're excused.

(Whereupon, this witness was excused.)

JUDGE ROSE: Call your next witness.

MR. SISKIN: Mr. Siegel.

Whereupon,

DAVID SIEGEL

called as a witness, was duly sworn and testified as follows:

JUDGE ROSE: Be seated.

State your name and address.

THE WITNESS: David Siegel, 34 Prescott Place, Old Bethpage, 11804.

JUDGE ROSE: Please proceed, Mr. Siskin.

DIRECT EXAMINATION

Q (By Mr. Siskin) Mr. Siegel, how long have you been in the Union?

A Twenty-three years.

Q Were you ever an officer?

A No.

Q Were you ever on any negotiating committee?

A No.

Q Did there come a time when you left this Union?

A 1969, I believe.

Q And did there come a time when you established your own business?

A Yes, I did.

Q What was that?

What was that date, approximately?

A Novenber, '67, I believe.

But I was still a Union man.

Q But --

A I paid dues to the Union.

Q But, you were still a --

When you established this business, what were the business names known as?

A D. A. J. and J. A. D.

Q And at that point, did you work full time for those concerns?

A Not exactly full time.

I still was available for work in the Union.

Q Are you available --

Are you aware that Mr. Ostrofsky, yesterday testified that he had worked full time as did his partners?

A His end is his end; my end is different.

I was still a Union member, still dues paying member, and still available for work.

Q How was your availability different than his?

A Because I paid dues to the Union.

I was still a Union man.

Q Did you work any less than he did in the shop?

A Maybe.

Q And where were those shops located?

A One in Jericho, and one in Baldwin.

Q During that period of time, from the time you started in business, did you ever work for any other concern, other than D. A. J. and J. A. D?

A No, I did not.

Q And did you work six or seven days a week?

A Whatever was required.

Q What was your title in the comapny at that time?

recall?

A I can't remember.

Q Was it before the -- before the date the corporations were set up?

A A short period before.

Q And did it take you awhile to set up the shops?

A I worked right up until the day we opened the shop.

Q Which was?

A '67. November or --

For non-Council members.

Q And did you work different shifts than your partner, or partners?

A Yes, I did.

Q What shifts did you work?

A I can't recall now.

Different hours.

Q Did you supplement each other's shifts?

A We did.

Q Did you bring along copies of your tax returns today?

A They have all my returns.

MR. SISKIN: May I see the credits, the tax returns, et cetera?

MR. APPELL: Your Honor, I'm going to need a minute to dig them up.

Mr. Levy must have been working with them.

Q Was he the accountant for the corporation as well, too?

A Yes, he was.

Q Would you produce the 1968 State Income Tax Return reflecting the division of income?

A If I can find it.

Q All right.

Now, was it a normal practice for someone to have his own shop, and still remain on as a Union member?

A I wouldn't know what's normal and abnormal in this case.

Q Were there any other bagel shops that had -- that you know of, that had such a situation?

A I wouldn't know.

Q Was it the practice in 1966, do you know?

A I wouldn't know that, either.

MR. SISKIN: I have no further questions of this witness.

JUDGE ROSE: Any questions?

CROSS EXAMINATION

Q (By Mr. Appell) Mr. Siegel, at anytime after the lockout begain in 1967, were you offered any reinstatement by any member of the Bagel Bakers Council?

A No, I wasn't.

Q Did the Union ever advise you to go back to work?

signed a new contract with the companies?

A No, I don't.

Q You don't remember?

A No.

I can't recall that far back.

Q Did you have machinery in your shop?

Did you institute any machinery in your shop during --

A We had a dough mixer.

Q A what?

A Dough mixers.

Q When did you have that?

A Every shop had that.

Q Okay.

Did you have any machines that actually manufactured the bagels?

A No, I did not.

Q In '67 or '68?

A No, I did not.

Q Were you ever instructed by the Union, while you were in business, in '67 and '68, that you had to limit the amount of overtime worked by any employees?

A No, I didn't.

No, I was not.

Q Did you in fact restrict the number of hours worked of employees in '67 or '68?

A No, I did not.

Q Let me finish my question before you answer.

What was your answer?

A No, I did not.

Q Did you ever restrict or were you ever instructed by anyone, to restrict, in those years, the amounts or numbers of boxes of bagels that employees were putting out?

A No, I was not.

Q If you looked at your income tax returns, would you be able to find here whether you --

A I don't know.

Q -- whether you received vacation funds from the Union?

A I don't know.

I may.

Q I show them to you.

A I don't know how it was broken down.

(Whereupon, the above-mentioned document was handed to the witness.)

A I would have to see the W-2 forms.

Q Do you have them at home?

A I probably do.

Q Can you furnish them to this Court, if you find them?

A If I can find them.

MR. APPELL: No further questions of this witness, Your Honor, subject to his coming back with the various

documents that have been requested of him.

REDIRECT EXAMINATION

Q (By Mr. Siskin) Would you bring in your 1968 and 1967 State Income Tax Returns?

A If I can find them.

Q Will you do that today or tomorrow?

Anytime you can bring them in, I'll put you on.

A Would I have to come back to testify, or just bring them in?

Q I just want the returns.

A I can send them in, then.

Q Well, it's up to Counsel.

JUDGE ROSE: Let's go off the record.

(Discussion off the record.)

JUDGE ROSE: On the record.

You're excused, Mr. Siegel.

(Whereupon, this witness was excused.)

JUDGE ROSE: Call your next witness.

MR. SISKIN: I have one or two more questions.

JUDGE ROSE: Do you have more questions?

MR. SISKIN: One more question.

JUDGE ROSE: Take the stand, Mr. Siegel.

(Whereupon, the witness resumes the witness stand.)

CONTINUED REDIRECT EXAMINATION

Q (By Mr. Siskin) What were your normal work days when

you did work in the bagel industry?

A There was no such a thing as normal days.

Q Well, did you prefer weekends or did you normally work weekends?

A I worked any day, any hour, any month, any year. There was no such thing as normal in this industry. No night, no day, no nothing. No hours.

MR. SISKIN: I have no further questions.

JUDGE ROSE: Okay, you're excused, Mr. Siegel.

(Whereupon, this witness was excused.)

JUDGE ROSE: Call your next witness.

MR. APPELL: Israel Goldenberg.

Whereupon,

ISRAEL GOLDENBERG

called as a witness, was duly sworn and testified as follows:

JUDGE ROSE: Please be seated there, and tell your name and address to the Court Reporter.

THE WITNESS: Israel Goldenberg, 636 Dahill Road, Brooklyn.

DIRECT EXAMINATION

Q (By Mr. Siskin) Mr. Goldenberg, did there come a time when you were forced to leave your employment as a result of a lockout?

A Yes, sir.

Q And did that time occur sometime in February of 1967?

JUDGE ROSE: We'll be in recess for fifteen minutes. And let's be back promptly, please.

(Whereupon, there was a short recess taken in the hearing.)

JUDGE ROSE: Back on the record.

Whereupon,

JACK SUGARMAN

JUDGE ROSE: Be seated.

State your name and address.

THE WITNESS: Jack Sugarman, 2499 Ocean Avenue, Bellmore, New York.

JUDGE ROSE: What's your name again?

THE WITNESS: Jack Sugarman.

DIRECT EXAMINATION

Q (By Mr. Siskin) Mr. Sugarman, did you bring along copies of your income tax returns today?

A Yes, sir.

Q Are they here now?

A Yes.

Q May I see them?

A Mr. Appell has them.

(Whereupon, Mr. Appell hands documents to Mr. Siskin.)

Q (By Mr. Siskin) Did there come a time when you went into business, Mr. Sugarman?

A Yes, sir.

Q Do you recall the name you went into business under?

A Sugarman & Son, Incorporated.

Q Pardon?

A J. Sugarman & Son, Incorporated.

Q Where was the bagel shop?

A 2729 Merrick Road, Bellmore.

Q Do you know the year that you went into business?

A Exactly, December 15th, 1967.

Q From the point you went into business, was that your principal place of employment?

A At the time, yes.

I had no other employment.

Q Okay.

And did you work at I. Sugarman & Son, Inc. full time?

A J. Sugarman.

Q J. Sugarman & Son.

Did you work full time?

A Well, I'll say it was a part time thing.

Q And did you work for any other shops during that period of time?

A No, sir.

Q Was this a Union shop?

work for any other baker?

A After I opened?

Q Yes.

A No.

MR. SISKIN: I have no further questions of the witness.

JUDGE ROSE: Mr. Appell?

MR. APPELL: Yes.

CROSS EXAMINATION

Q (By Mr. Appell) Mr. Sugarman, are you positive that you never had worked for Telephone Employees Organization?

A Never worked for them.

Q Okay.

Do you recall whether Mr. Levy of the Labor Board, ever called you and asked you about it?

A This Mr. Levy?

Q Yes.

A Never called me.

Q You don't remember talking to him about --

A Never.

Q -- about whether you worked.

I'm not saying you did.

But, did he ever talk to you about it, if you remember?

A No, sir.

Never spoke to me about it.

relating to the economics of this situation?

JUDGE ROSE: Very well.

Q (By Mr. Appell) Mr. Sugarman, while you were in business, did you use any machines for the actual making of bagels?

A No, sir.

Q Mr. Sugarman, did you have any wholesale operations when you were in business?

A Yes, sir.

I had very, very little.

Q Very little?

A Very little.

Q Was that at the beginning or --

A No. It wasn't.

It was about a year after I was in business.

Q That would be, like, towards the end of '68?

A Right.

Q Did you maintain that wholesale operation, or did you stop it?

A I lost some of it, and some I had.

I kept a few customers in the immediate area of Bellmore.

Q Were you ever advised during 1967, '68, when you were in business for yourself in those years, were you ever advised by the Union, that there was a restriction on

how many bagels a given employee could put out?

A No.

Q Were you ever advised by the Union or anyone else, that there was a restriction on overtime work, hours, production?

A No, sir.

Q Did you, in fact, maintain any such restrictions in your shop as to who could put out how much?

A No.

I had a small business. Very little business.

MR. APPELL: No further questions, Your Honor.

JUDGE ROSE: Mr. Siskin?

MR. SISKIN: Yes.

REDIRECT EXAMINATION

Q (By Mr. Siskin) Did you have any Union contract with the Union?

A Yes, sir.

Q What date did you execute that Union contract?

A Approximately ten days after I -- after I opened the doors, they came, and I signed a contract with Larry Horowitz and Laskowitz. Laskowitz.

Q And you signed that Union contract on behalf of your shop, did you not?

A Yes, sir.

Q As an officer of the company?

I'm teasing.

JUDGE ROSE: It may be a bit self-serving, but we'll let it stand.

MR. APPELL: No further questions at this time, Your Honor.

JUDGE ROSE: Mr. Siskin?

MR. SISKIN: I have no further questions of the witness.

JUDGE ROSE: Okay, you're excused.

(Whereupon, this witness was excused.)

MR. APPELL: Your Honor, I should like to recall Mr. Sugarman, very briefly.

JUDGE ROSE: Very well.

Mr. Sugarman. Have a chair.

Let me remind you that you have been previously sworn in this matter, and you're still under oath.

MR. SUGARMAN: Yes, sir.

JUDGE ROSE: Mr. Appell.

Whereupon,

JACK SUGARMAN

called as a witness, having been previously sworn, was examined and testified as follows:

RECROSS EXAMINATION

Q (By Mr. Appell) Mr. Sugarman, I show you a W-2 form, wage and tax statement, 1966, Bagel Bakers Union Local 338,

holiday and vacation pay.

I ask you if you can identify that as being one that you received?

A Yes, sir.

Q To the best of your knowledge, is the amount on there correct?

A That's exact.

Q As to what you received?

A We all got, in the Union.

MR. APPELL: I ask Counsel for Respondent's to stipulate that the amount paid according to the W-2, is $1,239.76.

MR. SISKIN: No, I won't stipulate that it is the amount paid.

I'll stipulate that's what the W-2 shows.

By no means it means --

I don't believe it would indicate under pension law or welfare law, that would be the amount necessarily paid.

MR. APPELL: Your Honor, I'm just asking for the stipulation.

JUDGE ROSE: Mark the document and we'll receive it into evidence.

MR. APPELL: I'm trying to avoid that, Your Honor.

JUDGE ROSE: That's okay.

He won't stipulate and he didn't have to.

Mark it received.

MR. APPELL: Will you stipulate that's what the document says?

MR. SISKIN: That's what the document says.

MR. APPELL: He will stipulate that's what it says.

JUDGE ROSE: The document being a 1966 W-2 form?

MR. APPELL: Yes, sir.

JUDGE ROSE: Made out to Mr. Jack Sugarman, from?

MR. APPELL: Bagel Bakers Union Local 338, holiday and vacation pay, 131 University Place, New York, New York.

JUDGE ROSE: Okay.

And is that part of the income tax return of 1966?

MR. APPELL: It is.

JUDGE ROSE: And was income tax paid on that amount, as reflected by the tax return?

MR. APPELL: I'd have to check, Your Honor, whether it was specified in the income tax return.

Q (By Mr. Appell) Mr. Sugarman, did you submit this wage and tax W-2 form with your income tax return?

A Yes.

Q And the best of your knowledge, that is the amount you received from the Union in 1966?

A Yes, sir.

There's another one, too.

Q Now, I show you a similar form from Bagel Bakers Union

Local 338, holiday and vacation pay, for 1967.

Is that your W-2 form?

A Yes.

Q The amount on there, $224.44, is that the amount you received in that year?

A Yes, sir.

MR. APPELL: At this time, I would call upon Counsel for Respondent to stipulate that that W-2 form does reflect the amount of $224.44, as being received by Mr. Sugarman.

MR. SISKIN: Not necessarily the amount being received. It's the amount shown and alleged on the W-2.

MR. APPELL: Yes.

MR. SISKIN: Yes, I so stipulate to that.

JUDGE ROSE: Very well, that stipulation is received.

MR. APPELL: I have no further questions of the witness, Your Honor.

JUDGE ROSE: Mr. Siskin, any questions?

MR. SISKIN: No further questions.

JUDGE ROSE: You're excused, Mr. Sugarman.

(Whereupon, this witness was excused.)

JUDGE ROSE: We'll be in recess until 1:15.

(Whereupon, the hearing was recessed for lunch at 12:15 o'clock P. M.)

oOo

(Whereupon, the hearing was resumed after lunch at 1:30 o'clock P. M.)

JUDGE ROSE: On the record.

Whereupon,

ABRAHAM BARON

called as a witness, was duly sworn and testified as follows:

JUDGE ROSE: Please be seated.

State your name and address.

THE WITNESS: Abraham Baron.

102-30 Queens Boulevard, Forest Hills, New York 11375.

DIRECT EXAMINATION

Q (By Mr. Siskin) Mr. Baron, did you hold any position with the Union?

A No.

Q Did there come a time when you got involved in a lockout in the labor -- in the bagel industry?

A Yes, I was involved.

Q And prior to the lockout, who had you been working for?

A Prior to the lockout, I worked for D & H, Tri-Boro, Golden, Hempstead, Coney Island, International, Turnpike, Begal Wheel.

With a lot of shops.

Q And when the lockout ended, did you go back to work for any of the Council shops?

A She never earned. She never worked.

Q Okay.

Did you receive any vacation and holiday pay from the Union in '66 or '67, that you now remember?

A In '66, I believe I did.

If everybody did, then I did, too.

Q What was your job in '66, in the bagel --

A Baker.

Q Baker?

A Right.

Q How about '67, did you receive any in that year?

A Not for '67, no.

MR. SISKIN: What was the answer?

THE WITNESS: No, sir. Not that I recall.

Q Do you remember how much you received from the Union?

A In '66?

Q Yes.

A It was around -- about 12 hundred.

Q Do you have any reason to know why, if other people got it in '67, you did not?

MR. SISKIN: Objection.

JUDGE ROSE: If he knows.

A I don't think anybody did get it for '67.

Q To your knowledge, did you receive it whenever anyone else did, who was a member of the Union?

A I probably would have.

MR. APPELL: I have no further questions, Your Honor.

JUDGE ROSE: Mr. Siskin, anything further?

MR. SISKIN: Yes.

REDIRECT EXAMINATION

Q (By Mr. Siskin) Do you know how welfare benefits would be computed?

A No, sir.

Q Well, do you know whether it was computed on the number of boxes?

A I don't think it was by the boxes.

MR. SISKIN: I'm going to call upon Counsel to stipulate to the amount of any correction, or the amount of the correction, as reflected alone by the difference in wages for the '67 year, between the amount shown on Appendix 1-B, and the amount shown on the W-2 income, for 1967, of this witness.

MR. APPELL: Your Honor, I'm not prepared to stipulate further at this point.

I think all the facts are in the record.

JUDGE ROSE: Okay.

In any event, Mr. Siskin, looking at Appendix 1-C, I don't think it makes any difference.

MR. SISKIN: It does, Your Honor.

JUDGE ROSE: What?

he wanted to persist in this claim, I would expect the Court would require him to be submitted to cross examination, and I would prefer to have this thing resolved before he returns to Florida, because I don't know, unless he wishes to return at his own cost.

JUDGE ROSE: Well, on that, you can make your decision and advise me later in the hearing, later in the week.

MR. APPELL: Yes.

JUDGE ROSE: Anything further?

MR. APPELL: No, Your Honor.

No further questions.

MR. SISKIN: I have nothing further.

JUDGE ROSE: You're excused, Mr. Blind.

THE WITNESS: Thank you.

(Whereupon, this witness was excused.)

JUDGE ROSE: Call your next witness.

MR. SISKIN: Irving Levy.

Whereupon,

IRVING LEVY

called as a witness, was duly sworn and testified as follows:

JUDGE ROSE: Please be seated.

State your name and address for the record.

THE WITNESS: Irving Levy, 915 East 77th Street, Brooklyn.

was for Golden, just prior to the lockout?

A I --

Q Per week?

A I was making about $150.00 a week there.

Not more.

I don't recall.

Q Was that for one day a week?

A That's right.

Q And how many bagels would you normally produce at that one day a week operation, at Golden?

A I forgot what the price was.

I forgot what the salary price was at that time.

MR. SISKIN: I have no further questions of this witness.

JUDGE ROSE: Mr. Appell?

CROSS EXAMINATION

Q (By Mr. Appell) Mr. Levy, what was your job in the bagel industry?

A I was a foreman.

Q Did you do baking?

A Yes, sir.

Q Were you ever offered your job back with Golden Bakers, after the lockout began?

A No.

Q Did the Union ever tell you to go back there?

A No.

Q Mr. Levy, I show you a copy of a W-2 form from Bagel Bakers Union Local 338, holiday and vacation pay for 1966.

To the best of your knowledge, is that the W-2 form that you received?

A Could be.

Q I ask you to look at the amount paid to you.

It says, $1,239.76.

Is that the amount you received in 1966 for holiday and vacation pay from the Union?

A For a year?

Q Yes.

A Yes.

Q Now, I ask you to look at a copy of a similar statement for 1967, from Bagel Bakers Union Local 338, holiday and vacation pay.

Is that the copy of the W-2 that you received?

A I don't know.

Q The amount on that copy, $224.44, is that what you received from the Union Fund in 1967?

A Was that for a year?

Q Yes. 1967.

A It's possible.

MR. APPELL: Your Honor, I would ask Counsel for Respondents to stipulate that that is the amount specified

on Mr. Levy's W-2 for 1967, $224.44.

MR. SISKIN: If it's intended solely for the purpose of limiting as to what the W-2 information shows, I will so stipulate.

If it's intended to indicate what the benefits were or were not for '66 or '67, I will not so stipulate.

MR. APPELL: I just ask you to stipulate that's what it says.

MR. SISKIN: That's what it says.

JUDGE ROSE: I'll accept the stipulation as if the W-2 form were received into evidence, as being what it shows.

I suppose you can always argue that a W-2 form doesn't prove that something was received.

MR. SISKIN: Well, this is --

Your Honor, on the record, it's been Counsel's position that very often a W-2 income does not reflect ordinary payments received.

It may reflect amounts allocated but not received, or vice versa, especially in the case of pension funds and welfare funds.

JUDGE ROSE: Well, okay.

You can argue that, if you want.

MR. APPELL: Your Honor, I believe the witness has really testified fully to it, but I would like Counsel,

if he will, to stipulate that the '66 W-2 for the Union holiday and vacation pay, for Mr. Levy, indicates wages paid subject to withholding, in '66, as being in the amount of $1,239.76.

MR. SISKIN: Yes. I so stipulate.

JUDGE ROSE: Very well.

The stipulation is received.

MR. APPELL: I have no further questions of this witness, Your Honor.

JUDGE ROSE: Mr. Siskin?

MR. SISKIN: Yes.

REDIRECT EXAMINATION

Q (By Mr. Siskin) Do you know how welfare benefits were computed?

A What?

Q How welfare contributions were computed?

A Where, in the Union?

Q No, by the Employer?

A How they were paid?

Q Yes, on what basis?

A They didn't pay it to us, they paid it to the Union.

Q Did they base it on some sort of prorated factor?

A On what the earnings were per box.

Q Do you know that to be a fact?

A That's right.

(Whereupon, there was a short recess taken in the hearing.)

JUDGE ROSE: On the record.

Next witness.

MR. SISKIN: Mr. Haimowitz, please.

Whereupon,

EDWARD HAIMOWITZ

called as a witness, was duly sworn and testified as follows:

JUDGE ROSE: Please be seated.

State your name and address for the record.

THE WITNESS: Edward Haimowitz.

1477 East 102nd Street, Brooklyn, New York.

MR. SISKIN: Now, at this point, Counsel for Respondent and Counsel for the NLRB would like to stipulate to certain corrections and revisions with respect to Mr. Haimowitz' credit earnings for the years '67 and '68.

I await Counsel's agreed stip.

JUDGE ROSE: Off the record.

(Discussion off the record.)

JUDGE ROSE: On the record.

MR. APPELL: Your Honor, we would move to amend the specification as follows, with respect to Edward Haimowitz.

What did you get?

MR. APPELL: $6,990.00 grand total for '68.

JUDGE ROSE: Okay.

MR. APPELL: Accordingly, Your Honor, with respect to Appendix 13-B, Roman numeral V, loss, net back pay for 1968, the figure for 1968 to 9, September 30th, would now be $6,990.00, which would be subtracted from the 11,923, base pay, base period, and that difference is $4933.00, and that is the net back pay we now contend is due to Mr. Haimotitz, for the period in 1968, and we would allocate the net back pay liability in accordance with the percentages indicated on Appendix 13-C, for Tri-Boro, 74%, Pops 16, Far Rockaway 10%.

We have yet to make the precise computations. But it would be according to that formula.

JUDGE ROSE: Very well.

Do you agree to that, Mr. Siskin?

MR. SISKIN: Without limiting any of my other rights or remedies or contentions, yes, Your Honor.

JUDGE ROSE: Okay.

The stipulation is received.

DIRECT EXAMINATION

Q (By Mr. Siskin) Now, Mr. Haimowitz, during the period in question, did you set up a new business?

A Which period in question?

Give me dates.

Q During the year 1968.

A Yes.

Q What was the name of that company?

A Galaxy Bagels, Inc.

Q From the time you began to operate that corporation, did you operate it on a full time basis for yourself?

A I was incorporated, as you see on the top of the page, but I went into production July 25th, 1968.

Between April and July, I was still working for the Union shops.

Q Did you remain a member of the Union?

A Yes.

Q Were you a Union shop?

Was Galaxy Bagels a Union shop?

A Yes.

Q Did you pay contributions --

A Yes.

Q -- Union contributions for yourself, as well?

A Yes.

Q All right.

What was your title in that corporation?

A On the organization, I was president.

Q And did you draw a salary regularly?

A No.

JUDGE ROSE: Mr. Appell.

CROSS EXAMINATION

Q (By Mr. Appell) Mr. --

MR. SISKIN: Excuse me one second.

I would like to introduce this as an Exhibit.

We only marked it for identification.

JUDGE ROSE: Any objections?

MR. APPELL: No.

JUDGE ROSE: Respondent's Exhibit 16 is received.

(Whereupon, the above referred to was received and marked Respondent's Exhibit 16 in evidence.)

JUDGE ROSE: Proceed, Mr. Appell.

Q (By Mr. Appell) Mr. Haimowitz, at any time after the lockout began, did Tri-Boro or Far Rockaway offer you your job back in 1967?

A No.

Q Now, did you return in '68 to Tri-Boro?

A During the Taft-Hartley cooling off period, I went to work for them.

Q Do you remember when that was?

A Yes.

The first week ended was February 9th, 1968.

I have my payroll slips here.

Q And did you -- did you work at Flatlands in that period?

A It was my son and myself working by the bench.

Q I see.

Now, in any of the shops you worked in in 1967 or '68, were any machines used to make bagels?

A No.

Q Did any of the shops you worked in in '67 or '68, have wholesale operations?

A All of them.

Q Do you remember a time when any of them cut back their wholesale operations in 1967 or '68?

A Not while I was there.

Q Did you have a machine in your shop, at Galaxy Bagels?

A No.

Q Did you have a wholesale operation?

A Yes.

Q Did you ever cut it back, in any way?

A No.

Q In 1967 or '68, did anyone advise you that your hours or your amount of production as a worker, were to be restricted in any way?

A I don't understand.

Say it again.

Q Did anyone advise you from the Union, or any of your Employers, in 1967 or '68, that your hours of work were to be restricted or cut down?

A No.

Q Did anyone from any of the companies or from the Union, advise you that your production, how much -- how many bagels you could put out, were to be limited?

A No.

Q Did you operate according to any such limitations, in your own shop, when you opened?

A No.

Q When you went into business for yourself, did you find that you were hurt in any way by any competition from frozen bagel dealers?

A On the contrary. That was my best advertising.

Q Can you explain that?

A The shoddy bagel that was on the market at that time from the out of state producers didn't hold up against the bagel that I was producing in my shop.

When you put one against the other, they all came to me. The customers in my area.

Q Did any of them indicate to you they had tried the other, the frozen bagels?

A All of them.

Q With respect to the $15 hundred that is reflected in that -- in this form, I believe, when did you actually draw that $15 hundred?

A After -- In the quarter, October 1st, to December 1st,

1968.

Q Was that supposed to be for the whole year of '68, or for the quarter?

A No. For the weeks starting then.

Q Now, with respect to vacation pay, did you receive any vacation or holiday pay from the Union, in 1966?

A Yes.

Q Can you tell us the amount?

A Offhand, no.

About $12 hundred. $14 hundred.

MR. SISKIN: Objection.

If he knows the amount, let him so state it.

If he has the records here, let him produce those records.

JUDGE ROSE: Do you have the records?

THE WITNESS: I don't have them.

They're subpoenaed.

JUDGE ROSE: Are the records available, Mr. Appell?

It would be nice to get the precise figure.

MR. APPELL: Yes.

JUDGE ROSE: I sustain the objection.

MR. APPELL: Your Honor, first, with respect to 1967, I would ask Counsel to stipulate that Haimowitz -- according to the W-2 form, Haimowitz received $224.44 from the Union holiday and vacation pay fund.

MR. SISKIN: The most I'll stipulate to, Your Honor, is the W-2 form shows that.

Whether he received more or less I can't answer, unless the record are produced.

JUDGE ROSE: Ask him.

Q (By Mr. Appell) This is for '67, Mr. Haimowitz.

This W-2 form, is that the correct amount that you received $224.44?

A Yes.

MR. APPELL: With respect to 1966, Your Honor, I cannot locate the W-2 form, from the Union fund, and I believe I should be entitled to ask the witness, because of that, and to get his best estimate.

JUDGE ROSE: If it's not available, ask him.

Q (By Mr. Appell) Mr. Haimowitz, I ask you again, as to 1966, your best recollection, how much did you receive from the Union holiday and vacation fund?

A $12 hundred.

MR. SISKIN: I'm going to object, Your Honor.

JUDGE ROSE: On what basis?

MR. SISKIN: Those records are available, I assume, in the Union.

The Union's records are being subpoenaed.

This witness is only giving his recollection by leading questions of the -- of opposing Counsel.

A Still have it to this day.

Q Did you have to hire extra employees to run the grocery?

A Well, it was actually a pickup.

We had the same counter people taking care of the same aspect of the business.

Q It didn't result in a loss of employees in any way, did it?

A No.

Q When did Mr. Horowitz come to Island Park to work?

A In October of 1968.

MR. APPELL: I have no further questions at this time.

JUDGE ROSE: Mr. Siskin?

MR. SISKIN: No further questions at this time.

JUDGE ROSE: I have a few questions.

EXAMINATION

Q (By Judge Rose) These things may be obvious to everybody in this room except me concerning the bagel industry in all New York City.

I need to know this so the record would be clear to me, at least.

Going back to 1967 as best you know how many bagel bakeries were there in the New York area?

A You are taking a year 1967 where there seemed to

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They are not as good as hand bagels because the machines do something but in shops where they have a lot of wholesale where speed is necessary it is a very good adjunct to the industry.

Q Are any bagels made by hand any more?

A Some are.

Q You have been involved in the bagel making and baking industry in New York City for 40 years or so?

A At least.

Q Tell me precisely how does it work that you get employees?

I am talking now about 1966, how would you go about getting somebody to come into your shop and make bagels for you?

A If I were opening up a new bakery?

Q No, just your existing shop.

A I would have no control of hiring the men.

I would have signed a contract with the Bagel Bakers Union at the end of a year's contract which was normally January 31st, the end of a particular year.

The delegate who represented the Union men would say how many boxes do I have to bake?

I would tell him based on my wholesale business that I had.

After figuring out the number of boxes I would tell

him I would need a set of people, three people for argument sake, and I had no control as to whom he was going to send.

Q How often would you be in contact with the delegate?

A One time, unless --

Q One time a week or --

A No, one time for the whole period, from then on. From that particular point on.

If I were instituting a new bakery, even at this time unto itself, I would go up to the Union, tell them I'm opening up a bakery.

They would say okay, we will send you a set of people regardless, once we signed a contract.

But in 1966, my having been in the business for so long I did not have to tell the delegate anything.

He knew from pest experience how many men I would need and the men in the shop would be in touch with him verifying the number of boxes that were being baked to reflect on the number of men needed.

Q What if your business increased over, for some reason, a particular week?

A For a particular week, as I stated earlier, that I would talk to the men in the shop, asking them for this particular day because it is a holiday, I have extra work to do, do you fellows want to do it or will you take

care of it by calling the delegate and tell him to send somebody else?

They normally would take care of it by themselves.

I would have no contact with the Union representative at that time.

Q You mean they would work longer hours?

A If it suited them.

If not they would call the delegate and say send somebody in for this particular day.

Q And then is it your understanding or your knowledge that the bagel bakers would go from shop to shop or work more than one shop?

A That reflected on categories of people in the Union.

Steady people as against itinerant workers.

There were -- a practice in the Union when I was in the Union, I remember when I was in the Union, that if you just came into the Union as a new Union man, you had to sort of wait in line as against seniority with regard to people who have been in the line longer than you were, on that basis.

Q Wait in line for what?

A Wait in line for a job.

Q A steady job you mean?

A Or for an itinerant job.

T4-9

AFTERNOON SESSION

1:30 P. M.

JUDGE ROSE: On the record.

MR. SISKIN: At this point, counsel asks that the union records that have been subpoenaed be produced.

MR. AMSTER: Your Honor, I represent--

JUDGE ROSE: Come up here, please.

Will you keep it quiet down in the back? I will ask anybody that insists on talking to leave the hearing room.

Will you tell us your name, please?

MR. AMSTER: Rubin Amster.

JUDGE ROSE: Who are you, Mr. Amster, and what is your position?

MR. AMSTER: Presently right now, Your Honor, I'm acting business agent of the Bagel Division of Local 3.

JUDGE ROSE: Are you responding to the subpoena for union records?

MR. AMSTER: I am trying to, Your Honor.

JUDGE ROSE: Do you have the records with you?

MR. AMSTER: Well, as I explained to Mr. Siskin, I'm not familiar with the way the records are, and when I got the subpoena I searched and as I searched I gave Mr. Siskin all the information I could find.

MR. SISKIN: Yes, excuse me, that is correct.

BY MR. APPELL:

Q Mr. Amster, do you recall the union making payments to the members who were employed in the industry in 1966 for vacation and holiday pay?

A Yes, sir.

Q Do you have personal knowledge as to how much that amount was per baker or bagel maker in 1966?

A I wouldn't have the exact amount but I know it varied, checks amounted to a little over $1200 and distributed to the bakers in three phases.

One was a Passover check, one was a summer check around July time, and another was around the Christmas-New Year time their three checks were issued.

Q You say three of them totaled about $1200?

A Yes, sir, or a little better, sir.

Q To your knowledge, was this amount also paid to the kettlemen or helpers?

A I believe it was less.

Q Do you have any idea or any knowledge, I should say, as to what that amount was for the kettlemen or helpers?

A No, I don't.

Q With respect to the year 1967, do you have

personal knowledge as to whether the union made vacation and holiday payments to the bagel bakers and makers?

A Yes, sir.

Q How much was that amount for in '67 per person?

A Well, if my recollection is correct, I know in the year '67, we issued one check. It was a small check, and we instituted a vacation pay should be paid three and a half per day per man.

Q When was that instituted, do you remember?

A In 1967. I couldn't--I don't recall exactly when.

(continued on next page)

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Q Do you know what the amount was that was paid per person in '67?

A The amount per person?

Q Yes, that was actually paid, the small amount that you mentioned?

A No, I don't recall, sir.

Q Do you recall if it was about two twenty-four?

Does that ring a bell to you?

A It would be in that area, sir.

Q Do you have any notes with you that would show that?

A No, sir.

MR. SISKIN: Objection.

The figures really are erroneous.

There is no hook-up between the three fifty a man and the two twenty-four for the year that is mentioned, none whatsoever.

In fact, the total is much larger.

JUDGE ROSE: Well, Mr. Appell?

MR. APPELL: Your Honor, I think the testimony would speak for itself.

I would like to, however, examine him further when that shift to $3.50 per day took place.

JUDGE ROSE: Very well.

The objection is overruled.

Q (By Mr. Appell) Do you recall if that $3.50 a day formula went into effect in '68 as opposed to '67?

A No, I believe it was '67, sir.

Q How soon after the lockout began, do you know?

A No, I really don't.

Q Do you have any other papers on you that you haven't shown yet?

A No, sir, except the one that Mr. Levine took.

Q Did you have with you this morning a small piece of paper that indicated how much the vacation payments were in 1966 or '67?

A Yes, I did, but what I quoted you, sir.

Q Do you have it with you now?

You have that paper?

A Yes.

I made a few other notations on that.

Q This piece of paper that you have handed me, what is the source of the information on there?

A My knowledge, sir, to the best of my memory.

Q I ask you to look at this piece of paper which says 1967.

Will you tell us what you wrote after that?

A Two two four, sir.

Q What else does it say?

MR. SISKIN: Objection.

I would like to know when it was written, where it was written and who told him to write it.

His testimony just up to now has been that he could not locate any of the records up to those years.

MR. APPELL: Your Honor, that is proper cross-examination or voir dire if the document is offered.

I think I should be permitted to continue examination.

JUDGE ROSE: Well, I don't know what this is suppose to mean, Mr. Appell.

Can you lay a predicate?

MR. APPELL: I'm trying to establish the amounts of holiday and vacation pay paid to the various people in 1966 and 1967.

The witness has a piece of paper, he has the figures down on this and I want to ask him the source of that information so that I can --

JUDGE ROSE: Are you going to introduce that document?

MR. APPELL: Not at this time, your Honor.

I am using it to refresh his recollection.

JUDGE ROSE: Well, first prove his recollection is exhausted then.

Q (By Mr. Appell) Mr. Amster, do you now recall at this time how much each person received from the

[1050]

holiday and vacation pay funds of the Union in 1967?

A All except that $224, sir, I couldn't tell you.

Q Was to your knowledge $224 paid to the men?

A That's right.

Q Was there an additional amount paid in 1967?

A Yes, sir.

Q Could you explain that?

A Well, we instituted, instead of having the contributions sent to the Union, each individual man that worked that particular day would receive $3.50 per day towards his vacation and holiday.

Q Did that begin during the lockout or after the lockout, to the best of your knowledge, if you remember?

A I don't recall, sir.

MR. APPELL: No further questions at this time, your Honor.

JUDGE ROSE: Mr. Siskin, redirect?

REDIRECT EXAMINATION

Q (By Mr. Siskin) Who asked you to produce this paper here today?

A I brought it on my own, sir.

Q Where did you obtain the information from?

A Well, I was thinking back to my own knowledge, sir.

Q Did I ask you to produce this information in any subpoena?

Famous Bagel Bakery?

A Yes, that's right.

Q Are you sure you did not have any other self-employment or any other non-related income other than that that is reflected by the Council Members during 1968?

A My income was made in the bagel industry.

MR. SISKIN: No further questions.

JUDGE ROSE: Mr. Appell?

MR. APPELL: No further questions, Your Honor.

JUDGE ROSE: You are excused, Mr. Schechter. Thank you very much.

Call your next witness.

MR. SISKIN: Lawrence Horowitz, please.

Whereupon,

LAWRENCE HOROWITZ

called as a witness, having been first duly sworn by Judge Rose, took the stand and testified as follows:

JUDGE ROSE: Please be seated and state your name and address for the record.

THE WITNESS: My name is Lawrence Horowitz, located 37-97 Regent Lane, Wantagh.

DIRECT EXAMINATION

BY MR. SISKIN:

Q Mr. Horowitz, did you ever hold office in the

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THE WITNESS: I think I have it home.

I sent W-2s.

MR. SISKIN: Would you produce those?

JUDGE ROSE: Will you get them and bring them down?

THE WITNESS: I will try and look for them.

I think I must have them in the house.

JUDGE ROSE: Will you bring them down?

THE WITNESS: Sure.

JUDGE ROSE: Anything else?

MR. SISKIN: No.

I will wait until I get the witness back with those returns.

JUDGE ROSE: Mr. Appell?

CROSS-EXAMINATION

Q (By Mr. Appell) Mr. Horowitz, were you ever offered a job back with Bageltown after the lockout began?

A Was I ever offered a job?

The delegate wanted to send me back at the time and I refused to go back.

Q When was that?

A That was when we had that four-month contract.

It was more or less personal reasons involved.

Q That was after September 30, '68?

A Right.

[1112]

was marked General Counsel's Exhibit No. 11 for identification.)

Q (By Mr. Appell) Mr. Horowitz, I show you General Counsel's Exhibit 11 for identification.

I refer you to the second part of that.

Is that a copy of the W-2 Form you received from the Union holiday and vacation pay fund in '67?

A Yes, sir.

Q The amount on there, $224.44, is that what you received that year from that fund?

A Well, if it is written here, I mean, I couldn't recall the exact figures but if it is written here it must be so, it has my Social Security number on it.

MR. APPELL: At this time, your Honor, I offer General Counsel's Exhibit 11 into evidence.

JUDGE ROSE: How much is that?

MR. APPELL: $224.44, your Honor.

JUDGE ROSE: Any objection?

MR. SISKIN: Same objection as before, your Honor.

JUDGE ROSE: Overruled.

GC-11 will be received.

(The document above-referred to heretofore marked General Counsel's Exhibit No. 11, was received in evidence.)

Q (By Mr. Appell) Mr. Horowitz, to the best of your knowledge as Union President was that the amount

21

[1113]

that all bakers and bagel makers received from the funds in those two years or was it different, '66, '67, the same as what you got?

A Talking about vacation, holiday fund?

Q Yes.

A All the bakers, I don't recall what the bakers helpers received.

All the bakers received that amount.

It was divided equally.

Q The helpers would be what kind of workers?

A What they call the kettle men.

Q Do you have any idea what the kettle men received in '66 or '67?

A I really don't, no, I can't recall.

Q It was less than this?

A It was less ours because it was rated differently, their pay scale.

Q Mr. Horowitz, I show you Respondents' Exhibit 27 which is in evidence.

I refer you to the amounts shown on Page 2 that you received from the Bagel Bakers Union in '67 and '68 which is broken down by quarters and then totaled.

I ask you to examine that and then I ask you if you can tell the Court what those payments were made to you for?

a Union shop.

MR. SISKIN: I have no further questions of the witness.

MR. APPELL: No further questions, your Honor.

JUDGE ROSE: Mr. Horowitz, you are excused.

Thank you.

MR. SISKIN: With the exception of his income tax returns.

JUDGE ROSE: Okay.

Mr. Horowitz, you bring back your tax returns.

Any examination of Mr. Horowitz concerning the tax returns will be limited to the items on those tax returns.

I will not allow any further examination on any other subject in this matter.

You are excused, Mr. Horowitz.

(Witness excused.)

JUDGE ROSE: Call your next witness.

MR. SISKIN: Mr. Goodrich.

Whereupon,

JAMES GOODRICH

was called as a witness by and on behalf of the Respondents and, having been first duly sworn by Judge Rose, was examined and testified as follows:

JUDGE ROSE: Please be seated and give your name and address to the Reporter.

THE WITNESS: James Goodrich, 2959 Seaford Court, Wantagh, 11793, New York.

DIRECT EXAMINATION

Q (By Mr. Siskin) Mr. Goodrich, did you bring with you your copies of your '66, '67, '68 returns?

A Yes, I have my '66, and '68 and the NLRB has my '67.

Q May I see those returns, please?

A '68, of my W-2s from '67.

MR. SISKIN: Thank you.

THE WITNESS: And I have my '66 return.

MR. SISKIN: I will return these to you.

THE WITNESS: I'm trying to see what date is first. Okay.

MR. SISKIN: Thank you.

Q (By Mr. Siskin) To your knowledge, are these true photocopies of the actual W-2s?

A Yes, sir.

MR. SISKIN: Off the record.

JUDGE ROSE: Off the record.

(Discussion off the record.)

JUDGE ROSE: On the record, please.

Mr. Appell?

MR. APPELL: Your Honor, may I just note that during the off the record discussion I furnished Social

now be, for Pops $9,620 and for Tri-Boro $200 and that would add up to $9,820.

We so move to amend the specification and if your Honor wishes we could have a revised appendix put in evidence.

JUDGE ROSE: That is not necessary.

The amount is received.

Go ahead, Mr. Siskin.

Q (By Mr. Siskin) Did you start a new business in 1967, Mr. Goodrich?

A Excuse me?

Q Did you start a new business in 1967?

A I entered a business in 1967.

Q What was the name of that business?

A Bagel Place, Incorporated.

Q Do you have a copy of the tax returns for '67 and '68 here?

A Yes.

Q The corporation returns?

A No, my personal income tax returns.

Q Do you have copies of those corporation returns?

A Do not have it.

Q Corporation still in existence?

A No.

Q Can you tell us when the corporation was started?

A I can only tell you when I entered the corporation.
Q Which was when?
A November 10, 1967.
Q And did you contribute money to that corporation?
A Yes, sir.
Q Did you execute a stockholders agreement?
A Yes, sir.
Q Do you have a copy of that agreement here?
A Yes, sir.
Q May I see that?
Did you subsequent to coming into that corporation become an officer of the corporation?
A Yes, sir.
Q And did you become a 50 percent owner of the corporation?
A Yes, sir.
Excuse me, I don't know if it was -- 50 percent? It was 25 my wife and 25 myself, I don't know, but it was a total of 50 percent.
Q Commencing with that November, 1967 date did you work full time for this corporation?
A Yes.
Q Was that five or six or seven days a week?
A Well, there were days in between that.
Some days I worked three days in my own place and

T9 - 5 1 of obtaining employment is deducted from interim earnings
2 to find back pay due, and I wonder if the corporation would
3 meet that criteria.
4 MR. SISKIN: I would also like to point
5 out, Your Honor, this is not of benefit to the individual
6 concerned. This is not a corporate debt. This is a per-
7 sonal obligation.
8 JUDGE ROSE: Well, I have a serious ques-
9 tion of whether it should be subtracted or added, Mr.
10 Siskin.
11 CROSS-EXAMINATION
12 BY MR. APPELL:
13 Q Mr. Goodrich, how long did you stay with
14 Bagel Place, until what date, do you remember?
15 A I'm just recalling now it couldn't be more
16 than fifteen months.
17 Q Total?
18 A Fifteen, sixteen months the top. Because
19 that is all I could tolerate that man.
20 Q So you might have left about February or
21 March, '69?
22 A Something like that.
23 Q Do you remember how long before that you
24 had the accident, before you left?
25 A It could have been two or three months before

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T9-7

A I wouldn't repeat that in court.

Q Did you indicate that you refused this proposition?

A Yes, verbally.

Q After that did anybody offer you a job back from the Council?

A No, sir.

Q Did the union ever advise you you could go back to work at a Council employer?

A No, sir.

Q When you were working in the industry, what was your job?

A Baker.

MR. APPELL: Your Honor, I would now ask that the document I am about to give the reporter be marked as General Counsel Exhibit No. 12 for identification.

JUDGE ROSE: Very well.

(Document above described marked General Counsel Exhibit No. 12 for identification, as of this date.)

Q Mr. Goodrich, I show you General Counsel's Exhibit 12, which has been marked for identification. I refer you particularly to the top part of that.

A Yes, sir.

Q Is that, to your knowledge, an accurate copy of your W-2 form from the Bagel Bakers Union of holiday and

T9-8

vacation pay for 1966?

A Exactly.

Q The amount on there is $1,239.76. Is that the amount you actually received from the union fund for that year?

A Yes, sir.

MR. APPELL: At this time, Your Honor, I offer General Counsel's Exhibit 12 into evidence.

JUDGE ROSE: Any objection?

MR. SISKIN: To the extent that it is not the original of the W-2 I would object.

JUDGE ROSE: Overruled.

G. C. 12 is received.

(General Counsel Exhibit No. 12 for identification received in evidence, of this date.)

MR. APPELL: Your Honor, I have just shown counsel an original copy of it and he states he is willing to stipulate that General Counsel's Exhibit 12 contains an accurate copy of the W- 2 form.

JUDGE ROSE: Mr. Siskin?

MR. SISKIN: Yes, that is right.

JUDGE ROSE: All right.

MR. APPELL: Your Honor, at this time I believe I can stipulate with counsel for Respondents that the W-2 form for the same union holiday and vacation pay fund

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T9-9

for the year 1967 indicates $224.44 paid to Mr. Goodrich.

I call upon counsel to so stipulate.

MR. SISKIN: Yes, counsel will stipulate.

JUDGE ROSE: All right, the stipulation is received.

BY MR. APPELL:

Q Mr. Goodrich, to the best of your recollection is that the amount that you received from the Bagel Bakers holiday and vacation pay fund?

A 224.44, yes.

Q Mr. Goodrich, when you were in business at Bagel Place, was this a wholesale operation?

A It was a wholesale and retail.

Q Did there come any time when the wholesale declined, the amount of wholesale business declined?

A Well, we were just starting a business so I couldn't say whether it declined. We were increasing, we were picking up the wholesale business because we were a new corporation so we went out looking for wholesale business.

Q This would be in 1968?

A Yes.

Q And you added wholesal e accounts in '68?

A Yes, sir.

Q Did there ever come a time in that year when

PROCEEDINGS

JUDGE ROSE: On the record.

Whereupon,

STANLEY SIEGEL

called as a witness, was duly sworn and testified as follows:

JUDGE ROSE: Be seated.

State your name and address for the record.

THE WITNESS: Stanley Siegel, 264-41 Langston Avenue, Glen Oaks, Queens.

MR. APPELL: Excuse me, Your Honor, can we go off the record?

JUDGE ROSE: Off the record.

(Discussion off the record.)

JUDGE ROSE: On the record.

DIRECT EXAMINATION

Q (By Mr. Siskin) Mr. Siegel, did you bring any copies of your tax returns for 1966, '67 and '68, with you?

A No.

Q Do you have them?

A No.

I gave them all to the Union when we made out the -- the -- when we made out the, what we had to make out.

MR. SISKIN: Do you have the tax returns and the credit data, Counsel?

MR. APPELL: Yes.

Your Honor, I have Social Security returns, -- Social Security data, tax returns and W-2s, and also a questionnaire, two questionnaires, from the witness, and I'm furnishing them to Counsel.

Q (By Mr. Siskin) Mr. Siegel, were you ever an official of the Union?

A No, sir.

Q Were you ever on any committees in the Union?

A No.

Q Did there come a time in 1967 or '68, that you started in business?

A Yes.

Q Can you tell us when you started in business?

A I think it was February, '68.

Q February, 1968?

A I think so.

Q And what was the name of that business?

A Bagel City of Cedarhurst.

Q Were you the principal owner in that business?

A I had a partner.

Q How much did you own in that company?

A Fifty percent.

Q Is that company still in existence today?

A Yes, sir.

Q Now, did you draw any salary from that business?

A Yes.

Q What was that salary?

A I don't recall.

I think it was about 190 a week.

I'm not sure. It's down in the return.

Q Do you have your 1967 and 1968 corporation tax return?

A I sent it in.

MR. SISKIN: Off the record.

JUDGE ROSE: Off the record.

(Discussion off the record.)

JUDGE ROSE: On the record.

Q (By Mr. Siskin) When did you take the lease on the premises occupied at Bagel City?

A I think in 1968. '68 or '67.

I'm not sure.

Q Do you recall what date the corporation was incorporated?

A No.

Q If I showed you a tax return, would it refresh your recollection as to what date it was incorporated?

A If it says there.

Q That's why I'm showing it to you.

A 1967.

Q Will you state the date?

A 11/21/67.

Q Thank you.

A Yes.

Q Did you work five or six or seven days a week for Bagel City of Cedarhurst, once you started in business?

A I think, six.

The beginning was seven, then we went down to six.

Q And they were full time days, were they not?

A Yes.

Q Did there come a time when you went back to work for any of the Council shops after the lockout began?

A I think so.

I think we went back, I went back to Pops for awhile.

Q Do you recall the date?

A No.

Q Would it refresh your recollection if I mentioned the date February of 1968?

A February of '68?

I didn't go back to Pops.

Q Now, do you recall the running period of the lease, the first lease that you had, on the premises that you rented?

A I --

Q The inception date?

A I think it was seven years.

Q Pardon?

A Seven years.

Q Do you know when, on or about the date that it started?

A February of '68, I think it was.

Q And is it fair to say that starting with November of 1967, you were occupied in equipping and furnishing this store?

A The place was being occupied, but I wasn't there.

Q What were you doing?

A I was working.

Q Where were you working?

A I was working, I think at that time, I was working for a shop in Glen Oaks.

Q I see.

And then, starting February of 1968, you worked full time?

A Yes.

Q Now, in addition to your draw, your weekly draw from Bagel City, did you have any other compensation paid for Bagel City at that point in time, starting February of '68?

A No.

Q Did you draw any bonuses?

A No.

Q Were there any loans made to you by the company, at that time?

A No.

A No.

MR. SISKIN: I have no further questions of this witness.

JUDGE ROSE: Mr. Appell.

CROSS EXAMINATION

Q (By Mr. Appell) Mr. Siegel, what was your job in the bagel industry in 1967 and early '68, before you went into business for yourself?

A Making bagels.

Q Were you a baker or a maker?

A I made bagels.

Q And what was it in '66, what was your job?

A Same thing. I made bagels.

MR. APPELL: May I ask that the reporter mark this document as General Counsel's Exhibit 13 for identification?

(General Counsel's Exhibit 13 was received and marked for identification, of this date.)

Q (By Mr. Appell) Mr. Siegel, I show you General Counsel's Exhibit 13 for identification.

I ask you if that's a copy of the W-2 form you received --

Strike that. I'm sorry.

Mr. Siegel, I show you General Counsel's Exhibit 13.

Is that the W-2 form from the Union's holiday and vacation pay for the year 1965, that you received?

MR. SISKIN: Objection.

JUDGE ROSE: '65?

MR. APPELL: Yes.

MR. SISKIN: '65 is not pertinent before this proceeding, Your Honor.

MR. APPELL: Subject to connection, Your Honor, with the following year.

JUDGE ROSE: The objection is untimely at this point.

A Yes.

Q The amount on there, 1,239.76, is that the amount you received from that Union fund in '65?

A I think so.

Q Now, do you recall whether you received holiday and vacation pay in '66, from the Union?

A I don't know.

I think partially. I'm not sure.

Q Do you have any W-2 forms at home that indicated how much you received from the Union fund in 1966?

A Maybe. I don't know. I don't know.

What was the year I sent in?

Q All right.

I show you Respondent's Exhibit 32, which has been marked for identification.

Is this your copy of your income tax return for the year 1966?

A Yes.

Q Is everything that you reported in here true to the best of your knowledge and belief?

A Yes, sir.

Q I ask you to look at the last page where it says, Bagel Bakers Union Local 338, and it says, wages, $1,239.76.

Is that correct?

Is that what it says?

A Yes.

Q Is that the amount you received from the Union, in the year 1966?

A Yes.

Q Would that be --

For what fund would that be from the Union in '66?

A That would be the holiday -- the vacation pay, probably. Holiday.

I'm not sure.

Q And you received that amount in '66, $1,239.76?

A Yes.

MR. APPELL: May we go off the record a moment, Your Honor?

JUDGE ROSE: Off the record.

(Discussion off the record.)

JUDGE ROSE: On the record.

Q (By Mr. Appell) Mr. Siegel, I show you a copy of a

wage and tax statement, 1967, from the Bagel Bakers Union, holiday and vacation pay.

Is that a copy of your W-2 that you actually received from that Union fund?

A Yes.

MR. APPELL: At this time, Your Honor, I call upon Counsel for Respondent to stipulate that that copy indicates that Mr. Siegel received $224.44 for the Bagel Bakers Union, Local 338, holiday and vacation pay fund, in the year 1967.

MR. SISKIN: I'll stipulate that the copy of a purported W-2, in the files of the NLRB, reflects that.

Yes.

JUDGE ROSE: The stipulation is received.

Q (By Mr. Appell) Mr. Siegel, when you went into business for yourself, did you have any wholesale accounts?

A Yes.

Q Could you state what percent of your business, in the year 1968, from February to September, was sholesale?

A I --

Q If you can recall or approximate?

A About two-thirds.

Q Was there any time during that year that your wholesale business went down?

A No.

A No.

Q Did it ever begin to use machines?

A Yes.

Q When?

A About four years ago.

Q When you were in business in '68, were there any restrictions on overtime hours of the workers?

A No.

Q Was there any restriction on how much each bagel employee could produce?

A No.

Q Was there any kind of a cutback in employment in '68?

A Cutback?

Q Yes.

Where you had reduced the number of men in '68?

If you recall.

A We did part of the work and the man from the Union did part of the work.

Q Did there come a time when Pops asked you to come back to work in 1967?

A No.

Q Now, is it correct that in '68, you worked for awhile at Flatlands?

A I think one or two days a week.

Q Do you recall now whether Pops ever offered you a

job back after the lockout started?

A No.

Q You don't recall, or your answer is, they didn't?

A He never asked.

Q Do you recall whether the Union ever told you to go back to Pops in 1968?

A I think so.

I think they did.

Q Do you remember when that was?

A I -- Not off hand.

Q Do you remember if you went back?

A I think we went back for awhile, for two months or so. I'm not sure.

MR. APPELL: I have no further questions at this time, Your Honor.

REDIRECT EXAMINATION

Q (By Mr. Siskin) Mr. Siegel, do you recall whether your corporation lost business -- lost money in its operations for the first two years of business?

A I don't recall, but I don't think we made.

MR. SISKIN: I ask this be marked for identification, 1968 return.

(Respondent's Exhibit 33 was received and marked for identification, of this date.)

MR. SISKIN: I'm referring to a 19 -- October 1, '68

MR. SISKIN: I have no further questions.

JUDGE ROSE: Anything further of this witness?

MR. APPELL: I have no further questions of this witness.

JUDGE ROSE: Okay, Mr. Siegel, you're excused. Thanks a lot.

(Whereupon, this witness was excused.)

JUDGE ROSE: Call your next witness.

MR. SISKIN: Mr. Provder.

Whereupon,

SAMUEL PROVDER

called as a witness, was duly sworn and testified as follows:

JUDGE ROSE: Please be seated.

DIRECT EXAMINATION

Q (By Mr. Siskin) Mr. Provder, did you ever go into business in the bagel industry?

A Yes.

Q When did you go into business?

A Three years ago.

Q And prior to that time, had you ever had any business venture at all in the bagel industry?

A No.

Q Did you work for any shops regularly, on a regular basis, prior to the lockout?

A I worked for what shops?

the Union.

Q And you had made application prior to that time, did you not?

A For withdrawal?

Q Yes.

A Well, all you have to do is tell them you want to leave. They'll give you a withdrawal card. There's no waiting period.

Q Was that mailed to you down in Miami?

A Right. Right.

MR. SISKIN: I have no further questions of this witness.

CROSS EXAMINATION

Q (By Mr. Appell) Mr. Provder, after the lockout started in '67, were you ever offered a job back with any of the companies you had worked for, which locked workers out?

A No.

Q Did the Union ever ask you to go back to any of them?

A No.

Q Mr. Provder, I show you a copy of a wage and tax statement, a W-2 form for 1966, in the Bagel Bakers Union Local 338, holiday and vacation pay.

A Yes.

Q Can you tell us if that's a copy of the W-2 you

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received from the Union fund in '66?

A Yes.

Q The amount on there, can you read that for us, please?

A Yes, yes.

$1,239.76.

Q Is that the amount you received from the Union fund in 1966?

A Yes.

Q I now show you a similar -- a copy of a similar form from the same Union fund, holiday and vacation pay, for 1967.

Is that a copy of your W-2 form from that fund?

A Yes.

Q What's your answer?

A Yes.

Q Can you tell us the amount that you received, according to that form?

A $224.44.

Q And to your knowledge, is that the amount you received from this Union fund in 1967?

A Yes.

Q Your answer is?

A Yes.

Q What was your job title in the bagel industry?

A Benchman. Baker. Benchman.

Anything further?

MR. APPELL: No, Your Honor.

MR. SISKIN: No.

JUDGE ROSE: Okay, you're excused, Mr. Provder.

(Whereupon, this witness was excused.)

JUDGE ROSE: Call your next witness.

MR. APPELL: Your Honor, may we go off the record a moment?

JUDGE ROSE: Off the record.

(Discussion off the record.)

JUDGE ROSE: On the record.

We'll take a recess until eleven o'clock.

(Whereupon, there was a short recess taken at 10:50 o'clock A. M.)

JUDGE ROSE: On the record.

Mr. Siskin, call your next witness.

MR. SISKIN: Mr. Manny Kalkstein.

Whereupon,

MANUEL KALKSTEIN

called as a witness, was duly sworn and testified as follows:

JUDGE ROSE: Be seated.

State your name and address for the record.

THE WITNESS: Manuel, M-A-N-U-E-L, Kalkstein, K-A-L-K-S-T-E-I-N.

6614 Cameron, C-A-M-E-R-O-N, Court, Brooklyn, New York.

DIRECT EXAMINATION

Q (By Mr. Siskin) Mr. Kalkstein, were you ever a bagel baker, per se, yourself?

A Yes.

Q When did you start in the bagel industry?

A I believe in 1933.

I came out of school.

Q And did you work full time in the industry since then?

A Yes.

Q To the present time?

A To the present time.

Q And did you eventually become a principal of a bagel shop, itself?

A Yes, sir.

Q When was that?

A Well, I went into business with my father, in 1933.

Q I see.

A At that time, it was a partnership.

Q I see.

A And then, later on, I don't recall the exact date, it was somewheres around 1950, I'm not sure, give or take

THE WITNESS: It would be the same thing, wouldn't it?

JUDGE ROSE: No.

THE WITNESS: Sixty percent would be 48 -- 50.

Somewheres around 50¢ a dozen, roughly.

Because their labor cost was different.

JUDGE ROSE: And you didn't figure that you could sell bagels wholesale for 50¢ a dozen?

THE WITNESS: By no means, because our labor cost was better than 60%, in our industry.

JUDGE ROSE: Okay.

Tell me about labor costs.

How much does it cost --

What were your labor costs in 1966, per dozen bagels?

THE WITNESS: Well, that's difficult.

You mean, my own?

JUDGE ROSE: Your own.

THE WITNESS: Well, I'd have to get that from my accountant.

JUDGE ROSE: Let's put it this way. Do you recall how much you paid the bagel bakers and makers?

THE WITNESS: Yes.

JUDGE ROSE: How much was it?

THE WITNESS: It was $26.00 for the hundred boxes.

JUDGE ROSE: Okay.

THE WITNESS: That's 26¢ a dozen, times three.

JUDGE ROSE: Twenty-six cents --

THE WITNESS: Per dozen, times three.

I'm sorry, per box.

JUDGE ROSE: Per box?

THE WITNESS: I'm sorry, per box. Times three.

JUDGE ROSE: Okay.

And that --

THE WITNESS: Plus a kettleman.

JUDGE ROSE: How much wa- --

THE WITNESS: He would work on a flat scale.

I really don't recall the amount of what it was.

Somewheres around 18, 20 dollars a night. I really don't recall.

And then we would have a driver and a helper to deliver them.

JUDGE ROSE: The helper to deliver?

THE WITNESS: To deliver them, that's right.

JUDGE ROSE: Okay.

But to make the bagels, you did -- the driver and helper weren't involved in that?

THE WITNESS: You have to figure that in the overall cost.

JUDGE ROSE: Well, --

THE WITNESS: It's true, in the making, right.

JUDGE ROSE: We're concerned with making and baking

bagels, in this case.

THE WITNESS: Right.

JUDGE ROSE: What I want to know is, what your labor costs were in 1966 to make and bake bagels.

And that would be 26¢ --

THE WITNESS: For three me.

That was 26¢ per box, for three men.

That's, figure four dozen -- four dozen plus per box.

JUDGE ROSE: How many --

THE WITNESS: It's 66 bagels.

JUDGE ROSE: Sixty-six?

THE WITNESS: Sixty-six.

That's four and two-thirds dozen.

JUDGE ROSE: There are 66 bagels in a box?

THE WITNESS: Right.

That's four and two-thirds dozen.

Of which -- 56 bagels, I'm sorry.

JUDGE ROSE: Fifty-six?

THE WITNESS: Four and two-thirds dozen, right.

JUDGE ROSE: Fifty-six bagels per box?

THE WITNESS: Right.

JUDGE ROSE: If we multiply 26 times 3, -- well, --

THE WITNESS: Times three is right.

Because, according to the contract, it was three men to make one bagel. Two to make it and one to bake it.

JUDGE ROSE: Okay.

One cuts a strip of dough and the other makes the bagel, and one man cooks it and one man bakes it.

And that would also include the spoils, because we would have to pay for every single bagel made, whether it's saleable or not.

And then there was take home, each man took two dozen bagels home.

All of that was spelled out in the contract.

JUDGE ROSE: How many bagels would these three men make a night?

THE WITNESS: Well, that would be according to the order.

We would have to guarantee one hundred boxes of bagels, whether they made it or not.

If they made 30 dozen bagels, instead of 466, we would still have to guarantee the hundred boxes, according to the contract.

JUDGE ROSE: The cost of the kettlemen, 18 to 20 dollars a night, would be for a --

THE WITNESS: For a hundred boxes of bagels.

If there was overage, we would have to give them something for that, too.

But, that was basic cost.

JUDGE ROSE: Well, according to my calculations, then,

for the three men who made and baked the bagels, your labor costs were about a cent and a half per bagel.

Would that be about --

Does that figure seem consistent with what your memory is?

THE WITNESS: No.

I thought it was more than that.

JUDGE ROSE: And if you paid the kettleman $20.00 a night, for 56 hundred bagels, which would be the hundred boxes, that would be --

THE WITNESS: Not 56 hundred, no.

Four hundred sixty-six dozen.

Four hundred sixty-six dozen is a hundred boxes of bagels.

JUDGE ROSE: Is it --

THE WITNESS: Not 56 hundred.

Four hundred sixty-six dozen.

JUDGE ROSE: I'm getting confused.

THE WITNESS: You're in thousands; it's only hundreds.

Four hundred sixty-six bagels --

JUDGE ROSE: There are 56 bagels in a box?

THE WITNESS: Yes.

JUDGE ROSE: A hundred boxes --

THE WITNESS: Four and two-thirds --

JUDGE ROSE: Fifty-six bagels in a box?

THE WITNESS: Right.

JUDGE ROSE: You make a hundred boxes?

THE WITNESS: Right.

JUDGE ROSE: In a night?

THE WITNESS: I see, you're on bagels.

JUDGE ROSE: That's 56 hundred bagels.

THE WITNESS: Is that right, Mr. Siskin?

I'm not figuring. I don't know. I don't know.

I'm not figuring.

JUDGE ROSE: I don't want to test your knowledge of arithmetic. I just wanted to get the raw data so we can, all of us, know how to add and subtract.

THE WITNESS: I think -- If I did it with a pencil, it would be better.

JUDGE ROSE: Okay.

That's all the questions I have.

REDIRECT EXAMINATION

Q (By Mr. Siskin) Now, reviewing these computations, so that we can try to achieve some sort of reasonable, clerical accuracy in these figures, in a given day's production, would it be fair to say that you had $26.00 costs, $26.00, and $27.00 cost?

A That's right.

Q Plus the kettleman cost?

A That's true.

Because the oven man got a dollar more.

Q So, it was, therefore, --

Is it not fair to say that the correct computation on a daily rate would be, without the kettleman, $79.00; 26, 26, and 27 --

A Seventy-nine, right.

Q Then the kettleman would be approximately 18 --

Is the figure 18?

A I don't recall what the contract said.

A VOICE: Twenty-one.

A I don't recall.

Q I'll take $18.00.

Would that be a total of $97.00?

A Correct.

Q What would the production be, assuming a full production meeting the minimum specified by the Union?

A One hundred boxes of bagels, which is four hundred sixty-six dozen.

Q And 466 dozen would be 5,592, or roughly 56 hundred bagels, correct?

A Correct.

That's not the amount, full amount that's saleable.

Q I understand.

A Because there's take home and spoils.

Q And I wouldn't cover, it would not cover those

situations when you didn't produce the minimum?

A That's true.

If I didn't have it, I'd have to pay it.

Q How often did that occur?

A Well, like I said before, I had a small bakery, and there were many times when I didn't have a hundred boxes of bagels, and I had to pay.

Q Assuming you did, though, have a full day's minimum production, as specified in the Union contract, based upon these figures you've just now given me, could you now arrive at a per bagel cost, representing the labor portion of such cost?

A Well, it would have to be done with a pen or pencil.

I couldn't do it in my mind.

Q Well, would it be fair to say that if you divided $97.00 by 56 hundred, as a daily minimum, that you'd get a, in theory, you'd get a per bagel cost, assuming that you manufactured or produced the minimum bagels required by the Union minimum pay scale?

A Right.

Q And if you could just do some arithmetic to clarify this record, Mr. Kalkstein, if you divided $97.00 into 56 hundred bagels, just quickly, and approximately, it would be somewhere between 5 and 6 cents a bagel, isn't that correct?

A If it comes out that, yes.

JUDGE ROSE: No, excuse me, Mr. Siskin.

THE WITNESS: If it comes out.

JUDGE ROSE: Let's not confuse the record any more than we have to.

That's not the way you do it.

To figure the per bagel cost, you divide 5,600 into 97.

MR. SISKIN: I beg your pardon.

JUDGE ROSE: And it comes out to be 1.7¢ per bagel.

MR. SISKIN: I'm sorry, you're correct.

Q (By Mr. Siskin) Now, on top of that, would you also have payroll taxes?

A Definitely.

All taxes. Not only payroll, but everything else that goes with it.

Q Would you also have a driver's cost?

A Plus a helper.

Q And how much did they get per day?

A I don't recall right now.

Q Did you have a driver during that period of time?

A Yes.

A Union driver.

Q 66?

A That's right.

It might be somewheres in the neighborhood of around

bagels on the machine and then take it and bak it. Yes.

MR. SISKIN: I have no further questions of this witness.

JUDGE ROSE: Mr. Appell?

MR. APPELL: Nothing further, Your Honor.

JUDGE ROSE: Okay, thank you.

You may step down.

(Whereupon, this witness was excused.)

MR. APPELL: Off the record.

(Discussion off the record.)

JUDGE ROSE: On the record.

Whereupon,

EUGENE MOORE

called as a witness, was duly sworn and testified as follows:

JUDGE ROSE: Please be seated.

State your name and address for the record.

THE WITNESS: Eugene Moore, 169 McNair, M-C N-A-I-R, Street, Brentwood, New York.

MR. SISKIN: At this point, I ask Counsel to produce the credits.

MR. APPELL: Your Honor, I'm furnishing to Counsel Social Security data and W-2 forms for Mr. Moore.

DIRECT EXAMINATION

Q (By Mr. Siskin) Mr. Moore, how long had you worked in the bagel industry, prior to 1967?

We'll just stipulate to it.

MR. APPELL: Your Honor, I will stipulate that a W-2 form for the year 1968, from Patterson Bagel Co. Corp., in Newark, New Jersey, issued to E. Moore, 169 McNair Street, Brentwood, New York, indicates $22.15 paid to Mr. Moore.

JUDGE ROSE: Very well.

Let's go on.

Q (By Mr. Siskin) Was that earned prior to September, '68, do you know, Mr. Moore?

A I really don't know.

I would imagine it would be.

Q Well, because it was before you got -- before you went out to -- to the Brentwood job, or was it a part time job, do you think?

A It probably was a -- during the first part of '68.

Q Thank you very much.

MR. SISKIN: I have no further questions of this witness.

JUDGE ROSE: Mr. Appell?

MR. APPELL: Yes, Your Honor.

CROSS EXAMINATION

Q (By Mr. Appell) Mr. Moore, when you were in the bagel industry, you were a kettleman, is that correct?

A Yes.

Q Is that also called a helper?

A Yes.

Q Mr. Moore, I show you a W-2 form, wage and tax statement, from '66, with your name on it from the Bagel Bakers Union Local 338, holiday and vacation pay.

Is that a W-2 form you received from the Union for that pay?

A I imagine it is.

Q Did you furnish this to the NLRB?

A If you got it, I guess I did.

Q Okay.

The amount on there, $590.06, is that the amount you received from the Union that year?

A Probably.

Q And in 1967, do you recall if you also got vacation and holiday pay from the Union?

A Well, --

Q That would be the year of the lockout?

A I don't remember getting anything, because I was in a bad way during that time.

I was about ready to go to welfare.

Q So, you don't remember whether you got anything from the Union?

A If they helped me, I don't remember.

Q Okay.

MR. APPELL: At this time, Your Honor, I would ask that this W-2 form be marked for identification as General Counsel's Exhibit 15, and I would offer it in evidence.

JUDGE ROSE: 14.

MR. APPELL: I have 15, Your Honor.

14 was Stanley Siegel's 1967 W-2 form.

I don't know that I offered it, if it was, but it was certainly marked.

JUDGE ROSE: I don't believe you marked it.

My next number is G. C. 14.

MR. APPELL: Your Honor, it's my error.

I believe it should be marked as General Counsel's Exhibit 14.

JUDGE ROSE: All right.

That's the 1966 vacation pay W-2?

MR. APPELL: Yes.

(General Counsel's Exhibit 14 was received and marked for identification, of this date.)

MR. APPELL: I offer that document in evidence, Your Honor.

JUDGE ROSE: Any objection?

MR. SISKIN: No objection.

JUDGE ROSE: G. C. 14 is received.

oOo

JUDGE ROSE: Off the record.

(Discussion off the record.)

JUDGE ROSE: On the record.

We'll be in recess until two o'clock.

(Whereupon, the hearing was recessed for lunch at 12:45 o'clock P. M.)

(Whereupon, the hearing was resumed at 2:15 o'clock P.M.)

JUDGE ROSE: On the record.

Call your next witness, Mr. Siskin.

MR. SISKIN: Mr. Minton.

Whereupon,

MORRIS MINTON

called as a witness, was duly sworn and testified as follows:

JUDGE ROSE: Be seated.

State your name and address for the record.

THE WITNESS: Morris Minton, M-I-N-T-O-N.

160-55 122nd Avenue, Jamaica.

MR. SISKIN: At this point, Counsel for Respondents will defer to Mrs. Lewis, who will be acting for her shop, which I believe is Flatlands?

MRS. LEWIS: Yes.

MR. SISKIN: Thank you.

MRS. LEWIS: I'm going to please ask the Court to please ask the questions for me, because I'm not capable.

JUDGE ROSE: You've written out here a number of questions that you'd like to have me ask Mr. Minton, is that right?

MRS. LEWIS: Right.

JUDGE ROSE: I'll be happy to ask them for you.

MRS. LEWIS: Thank you.

DIRECT EXAMINATION

Q (By Judge Rose for Mrs. Lewis) Were you, Mr. Minton, an employee of Flatlands?

A Yes, I was.

Q Did you work for Flatlands in 1966?

A Yes, I did.

I worked there since they opened up the shop, Your Honor.

Q And you were locked out then in 1967, with other members of the Union?

A Yes, I was.

Q Now, during 1966, how much was your weekly check, if you remember?

A During the time I was working for them?

Q Yes.

A About four and change.

Q About how much?

A Four hundred and change.

Q About four hundred, okay.

A Somewhere in that area.

JUDGE ROSE: Now, I'm not sure I understand what you mean, Mrs. Lewis.

Off the record.

(Discussion off the record.)

JUDGE ROSE: On the record.

Q (By Judge Rose) What was the basis of your pay, do you recall?

A At that time?

By a box basis.

Q What kind of work did you do?

A I was an oven man.

Q You were an oven man?

A Foreman, yes.

Q You were paid by the --

A By the piece.

Q By the piece?

A Yes, sir.

Q And that was pursuant to the Union contract?

A Yes.

Q Okay.

Was a portion of the money that you received from Flatlands for something other than wages?

A Who, me?

Q Yes.

A No. Only for wages.

Q Only for the work you did making bagels?

A Yes.

Q Now, your Employer was baking and giving the money to you, is that the case?

What's that all about?

A The Employer never baked for me, at any time, Your Honor. I did my own work.

Q You did your own baking?

A I did my own baking.

Q Do you know when Flatlands settled its labor problem with the Union?

A I believe it was in '67, the latter part of '67, I think.

I'm not sure, because it's been, you know, time.

But I was told during the time when they had -- when they were getting ready to sign a contract, that the Union had told me, Morris, that they did not want you back at Flatlands. Otherwise he would not sign the contract.

You know?

Q Were you ever notified by the Union to return to work

at Flatlands?

A The Union told me, Morris, they're going to sign a contract, and they had asked that you, you know, that, you know, they wouldn't sign unless they removed me from that shop, because I was picketing out there, at the time.

Q I see, okay.

A So, I didn't go back to that shop after that.

Q You did not go back to that shop?

A No, when we signed a contract.

Q You were advised by somebody in the Union that you were not wanted back in the shop by Flatlands?

A Yes.

They told me I was not wanted back in the shop, and that they had made some kind of agreement, that if they would send me back there, they would not sign a contract.

Because at the time I was picketing in front of that shop, before they had signed a contract.

JUDGE ROSE: Well, now, were other people picketing --

A The only one that was picketing there at the time, Your Honor, I was the only employee that was working there that was picketing on the picketline.

Q Okay.

Now, the question is, the Union men returned to work at Flatlands on June 3rd, 1967.

The question is, why did not you return?

A Like I said before, I was told by the Union that they would not sign a contract if I was sent back there. They would send me to another shop in Jersey.

Q Did the fact that you didn't return have something to do with the fact that you were a baker, and the bakers only worked on weekends?

A No. I know it wasn't that.

I think it's the fact that at the time I was picketing out there, I had a little dispute with one of my Employer's relatives.

Q Okay.

Did you know that part of the negotiations concerned the Employer working more?

A Repeat that again, please?

Q The Employer, in the Union negotiations, apparently, the Employers wanted more latitude to work. The Employers themselves, to work making bagels.

Were you aware of that?

A Well, if they did, if they wanted it, I wasn't -- you know, I didn't know anything about that, because I wasn't going back, anyhow.

So, that didn't have anything to do with me.

Q Do you know who the Flatlands' customers were?

A Did I know them?

Q Yes.

Did you know who, --

For instance, did you know that Wonder Baking Company was a customer of Flatlands?

A At that time?

Q Yes.

A No.

Q Did you know anything about a price cut from 68¢ a dozen to 51¢ a dozen?

A No. That wasn't in my knowledge, Your Honor.

Q Did you know anything about the bagels being made at a non-Union shop for less money, or anything like that?

A No.

Q Did you know anything at all about the price structure of bagels?

A Yes, I did.

Q Tell me what you knew about the price structure.

A I knew that -- I knew what they were selling bagels for at the time, wholesale and retail.

Q What was that?

A I think at that time they were selling it, I think it was 10¢ apiece, over the counter, and it was about 65¢ or 70¢ wholesale.

Q Did you work at all during the lockout?

A I worked for several shops.

I was sent around a little bit to several shops.

Q Excuse me?

A Yes, I worked a little bit during the lockout.

Q Okay.

When you worked for Flatlands, how many boxes did you produce a day?

A Roughly, about 170, somewhere in that area.

Q Do you recall how many boxes you produced during the lockout?

A Per day?

Q Yes.

Or a total.

A Let me see where I worked now.

I know I was sent to Jersey, so I made about 170, 180 in certain shops.

I wasn't working full -- you know, I wasn't working that full time.

I was working three or four days a week.

Q Okay.

Were you a foreman?

A Yes, I was a baker.

That's what they considered a foreman.

Q That's what they considered a foreman?

A Yes.

Q What was the rate of pay for the foremen, before the lockout?

[1345]

A I think it was a penny more than what the bench workers were getting.

I think we were getting 28¢ or 27, somewhere in that area, and the bench workers were making less, a penny less.

Q Per dozen?

A A box.

Q A box?

A Yes.

Q Do you know how much the foreman's pay was after the lockout, when the contract was settled?

A No, I never went --

You mean, at that particular shop?

Q Well, any shop.

A I think it remained the same for awhile.

Q Do you remember the places where you worked during the lockout?

A Yes.

Q Can you tell --

Let me refer you to Appendix 21-A.

No.

Oh, yes, Appendix 21-B. There's a list of Employers.

Are those the places where you worked during the lockout?

A Yes.

Q Can you think of any others that aren't on that list?

A I don't know what they call the bakery.

I worked on the Island one day, out in Long Island.

Q Is that on that list?

A No, it's not.

Q Do you know how long you worked there?

A Just one day.

Q How much did you make, do you recall?

A I made for that particular day, I think it was about $56.00.

Q $56.00?

A Yes.

Q You don't recall the name of the bakery?

A No, I don't know the name of that shop.

It was out on the Island.

Q Did you ever go into business for yourself?

A Yes.

Q When did you do that?

A I went into business for myself in 1968, in October.

Q October, 1968?

A Yes, Your Honor.

JUDGE ROSE: Okay.

Now, these other questions, these really aren't appropraite questions, this is argument.

Is there anything else you'd like for me to ask the witness?

we didn't have a foreman coming back. He wouldn't --

In any case, he would not have come back, since he was a foreman, and we didn't have a foreman coming back.

JUDGE ROSE: Well, --

THE WITNESS: In other words, you don't have a foreman there at this time?

MRS. LEWIS: No.

JUDGE ROSE: Okay.

You may advance that contention.

MRS. LEWIS: Can I show you the books?

JUDGE ROSE: You can take the witness stand and tell me about it.

That's the only way we can get it in.

Is there anything else you'd like me to ask him?

MRS. LEWIS: No.

JUDGE ROSE: Any other questions of this witness?

MR. APPELL: Yes.

JUDGE ROSE: Proceed, Mr. Appell.

CROSS EXAMINATION

Q (By Mr. Appell) Mr. Minton, do you remember if you got vacation and holiday pay from the Union in 1966, the year before the lockout?

A In 1966?

Q Yes.

The year before the lockout started.

A The year before?

I think so. I'm not sure, but I think so.

I don't know. I couldn't answer -- I can't, you know, remember offhand if the year before --

You mean not for 1966, you're talking about 1965 or '66?

Q The lockout started on February 1, 1967.

A Right.

Q I'm talking about '66, the year before that lockout started.

Do you remember if you got paid; and if so, how much, that year?

A I think I did.

I'm not -- you know, I'm not definitely sure, but I think I did.

I'm not sure.

Q Do you remember at all getting vacation and holiday pay from the Union?

A Yes, I do.

Q Do you remember how much you got in any given year, even if you don't remember --

A All right.

I got 400, I think it was $400.00 for one check, and then there was another check for, I think it was for two holidays, was a hundred and something dollars.

About, roughly about, altogether, I think it was about $600.00.

Q How many times did you get paid vacation pay in a year?

A I think it was three times. Three times.

Q To your knowledge, or on the basis of what you know or remember, did you get the same amount of vacation pay that the other bakers did, in 1966?

A Yes. We all got the same.

Q Would that also be true of 1967, the year of the lockout?

A Well, if we got anything, we all got the same amount. It was broken down that way.

Q When was it in 1967, that you were told that Flatlands wouldn't sign unless you were removed from the shop?

A It was, I think it was a day or two before they signed a contract.

I was told to come up to the Union and they told me that --

It was a day or two before they signed.

And that if -- the only way they can get the contract signed, if I was not to be brought back into that shop, and they asked me to go to work in another shop.

Q You say you believe that was because you had a personal dispute with somebody?

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JUDGE ROSE: Was that in cash or check or what?

MR. BORK: In cash.

MR. LEVINE: You also served International, Mr. Bork?

MR. BORK: Same day. Yes.

MR. LEVINE: International showed up.

JUDGE ROSE: Do you have the return, a copy of the subpoena?

MR. SISKIN: No, we're looking for that, Your Honor. Mr. Levine may have that in his office, I believe.

MR. LEVINE: Which is upstairs.

MR. APPELL: Your Honor, I had received a call, for what it's worth, from a Mr. Liptell, L-I-P-T-E-L-, who purported to be an accountant for that firm, I believe, and I referred it to Mr. Siskin.

I don't know whether they got in touch with each other.

MR. SISKIN: No.

I don't have it now. We tried to reach him that day, and we weren't able to.

JUDGE ROSE: Off the record.

(Discussion off the record.)

JUDGE ROSE: On the record.

Whereupon,

MARGARET LEWIS

called as a witness, was duly sworn and testified as follows:

JUDGE ROSE: Be seated.

State your name and address for the record.

THE WITNESS: Harriet Lewis, 23 Whitman, W-H-I-T-M-A-N, Drive, Brooklyn.

JUDGE ROSE: Can youspeak up a little bit?

THE WITNESS: Yes.

DIRECT EXAMINATION

Q (By Judge Rose) Are you one of the owners of Flatlands Bagel Bakeries?

A Yes.

Q Okay.

And the last witness was one of your employees, is that right?

A Yes.

Q And I asked him some questions, that you had written out for me to ask?

A Yes.

Q Okay.

Now, there are some other comments, however, that you'd like to make, are there not?

A Yes.

Q You just go ahead and tell us what you want me to hear.

A As far as the picketing, he said that he wasn't called back because of the picketing.

to go out in the middle of the night, and he didn't want to stay.

So, he used to come in, stay a little while and then go home.

Whatever was -- If we let him bake, he would have baked everything off in the afternoon and then we wouldn't have had hot bagels at night.

My husband would let him go home, rather than start with him, and he would bake off what we needed, and pay him.

Q Okay.

So, after --

When was it that you determined to quit using a baker?

A Well, while we were negotiating, we were trying to find a way that we could keep our wholesale route, and still compete in the market.

Because, if you didn't give them the price cuts that they wanted, they would just leave. They could get bagels on the outside.

So, this was the way we felt.

The other part was, the Union did take a cut in salary. He didn't remember.

At the time, the foreman was getting 29¢.

When they came back to work, the price was 26¢, all through the industry, for bakers or for bench men.

They weren't getting extra, the foremen, any more.

Even if he made the same amount of bagels, as he did the year before, he would be getting less money, because his price was less.

Q Okay.

If you hadn't locked out the -- all of these employees, would he have continued to work as a baker until you settled your contract?

A No.

We wouldn't have had any work for him, because we would have lost the customers anyway.

Even with this, we did lose.

The end was, we lost it anyway, as much as we tried. Because they were getting them so cheap.

Even with this less, we had gone, we were giving 48¢ to Levy, a dozen. They still got it cheaper, and we couldn't keep them. Even with that.

But at that time, we did away, like there was no way we could have kept a foreman, plus two men by the bench, and continued to serve the route.

They wouldn't take the bagels from us.

Q Okay.

Is there anything else you'd like to tell me?

A No. That's all.

JUDGE ROSE: Mr. Appell, do you have any questions?

MR. APPELL: Yes.

CROSS EXAMINATION

Q (By Mr. Appell) Isn't it correct, Mrs. Lewis, that Mr. Monton worked right up to the start of the lockout?

A Until the end of the contract.

That was the end of the contract.

Q That was February 1, 1967?

A Right.

Q And you had never told him beforehand that you were going to get rid of him, did you?

A We -- He knew, he was in the shop, and all the talk was going on that we were going to try to find a way to produce the bagels for less money. He knew that we could not hold on.

People were calling, he was in the shop, he was getting calls. He knew at the time that we were having trouble with our route.

Q I am asking you, did you ever tell him that you wouldn't be keeping him on?

A We were --

Q Before February 1, '67?

A We were talking along the lines that we would have to do away from the foreman, yes.

Q When did you tell him that?

A It was not our job to tell him.

The Union sent them in, or the Union took them out.

Suppose he went to work by the bench and suppose they took out the bench man and put him someplace else?

We had no control

We had a certain amount of work.

Q I am asking you, did you ever tell Mr. Minton, before February 1st, 1967, that you might not be using his services any more?

A His, in particular, no.

There was no reason to do that.

Because, maybe he would be out, maybe somebody else would be out.

Q Did you do away with any employees before February 1, 1967?

A What do you mean, "do away?"

Q Did you cut down the number of men that you had working?

A We had a set of men. That was what you -- what you had to have before, the other contract, you had to have a set of men, and we had.

Q Okay.

That only changed after you signed the contract with the Union in '67, isn't that correct?

In '68?

JUDGE ROSE: No, '67.

MR. APPELL: I'm sorry, Your Honor, '67.

JUDGE ROSE: Yes.

A It wasn't a contract.

It was a stipulation that we would agree to terms, and that they would take out the foreman.

Q So, the first time that was ever agreed to with the Union, was in June, '67, isn't that correct?

A Well, we were discussing it from the time, from February.

There wasn't -- Actually, there was no agreement --

MR. APPELL: Your Honor, I'm going to have to move to strike.

I'm asking for very simple answers, and --

JUDGE ROSE: Okay.

I think --

THE WITNESS: But they're not simple questions.

JUDGE ROSE: I think she's doing the best to answer your questions, Mr. Appell.

Go ahead.

MR. APPELL: So do a lot of witnesses, Your Honor.

JUDGE ROSE: Go ahead.

Q (By Mr. Appell) Mrs. Lewis, isn't it correct, I want a yes or no answer, that the first time the Union and you agreed on a cut of how many people would be working in your shop, was June, '67?

Isn't that correct?

Actually agreed.

I'm not saying discussed, I'm saying agreed.

A I'm trying to answer you, but there were other things that they were saying, as far as like they had an idea that maybe the man could work and not get paid.

There were other ways of going about it which might have achieved the same thing.

I don't know how to answer you.

Q Did there come a time when you agreed with the Union that you would eliminate a foreman?

Did they agree to that with you?

In June, '67.

A They agreed to cut one man, right.

Q Wasn't that the first time that they agreed to do that with you?

In writing.

Yes or no?

A It wasn't in writing, even at that time.

Q Okay.

Did you ever agree to it with the Union before June, '67?

A I --

Q Yes or no?

Where they agreed, as a final agreement, we will cut

MR. APPELL: Your Honor, should we tell these people they can go now?

You don't require their presence?

JUDGE ROSE: It makes no difference to me.

It's their case.

They can be here if they want or they can leave if they want.

MR. APPELL: The only people we need now are Mr. Sapadin and Mr. Silverman.

(Pause.)

MR. APPELL: I am offering G.C. 1 into evidence, and I am moving to amend the back pay specification as indicated on General Counsel's 1-N.

JUDGE ROSE: Any objection?

MR. SISKIN: Yes, Your Honor.

Several objections.

First, I assume Your Honor, that -- if this is admitted, will give me time to respond to this by answer.

JUDGE ROSE: Yes.

MR. SISKIN: But ab initio, I have the following objections.

It's now ten years, close to ten years from the time of the alleged -- of the unfair labor practive, and for the NLRB to come in at this time I am going to object on the ground of lapse.

I am going to further object on the grounds this constitutes a surprise, and I am further going to object on the grounds that because the government -- because the NLRB has refused to give us access to such of their records as consist of union members, union documentation, as to which testimony has already been on the record, that that information was utilized in the implementation and computation of the back pay specifications.

And the further ground that the union itself has not produced the records which are needed for determination inherent in this computation.

It has not produced them to date.

I am going to object on all those grounds and claim that the NLRB is not entitled to utilize this amendment in its back pay specifications.

JUDGE ROSE: Let me see the document, please?

MR. SISKIN: Sure.

(Mr. Siskin handing document to Judge Rose.)

JUDGE ROSE: Well, I am going to overrule your objection, and I will allow the General Counsel to amend the back pay specification.

I do not mean to imply that I am ruling that he is accurate in the requested amendment.

I am not ruling on the substance of this.

I am only ruling that the General Counsel should be

allowed to amend the back pay specification accordingly.

How much time do you need to prepare your defense on this, Mr. Siskin?

MR. SISKIN: I would say until perhaps next Tuesday.

JUDGE ROSE: Mr. Appell?

MR. APPELL: Yes, Your Honor.

I would just like to state to clear the record, the General Counsel has never denied any such documents as were requested.

First of all, I don't believe such documents concerning union records are even in our files.

Secondly, no such request was made.

We have never denied them.

I believe Mr. Siskin's statement is inaccurate.

As far as the request for an answer by Tuesday, I would note for one thing that we have made amply clear that such an amendment was forthcoming.

But in light of the fact that we have just today made the formal amendment, I suppose I would have no objection to giving Mr. Siskin until Tuesday of next week.

I again would presume that -- that I have some idea of what his defenses will be.

JUDGE ROSE: You have no objection to recessing the hearing until --

MR. APPELL: Until recessing the hearing.

I thought the question was whether I had any objection to his not filing an answer until Tuesday.

I would certainly object to recessing the hearing at this time.

I think there's no reason at all for that.

JUDGE ROSE: Mr. Appell, you are coming in here with an amendment that runs into the range of 90,000 dollars plus interest.

MR. APPELL: Yes.

At the same time, Your Honor --

JUDGE ROSE: And you are telling me that I should not grant a reasonable time to the Respondent's to prepare a defense and an answer to meet this allegation.

MR. APPELL: Your Honor, I am -- you are stating it perhaps more abruptly than I would.

I am saying that Respondents have been on notice that this amendment was forthcoming.

They have heard abundant testimony in the record as to the nature of these amounts.

I don't suspect that any of their defenses are so radically different or are -- or for which there is -- it's necessary to take days off from this hearing in order to file a formal answer.

So since there is no surprise, since there has been testimony on this matter, since the Respondent's defenses

are likely to be in the same nature as those already advanced in this hearing with respect to other forms of back pay, I do not believe it's necessary to adjourn this hearing.

MR. SISKIN: Your Honor, may I be heard?

JUDGE ROSE: You may.

MR. SISKIN: At the outset let me say I have done a vast amount of research in this case both on the weekends, on evenings of this trial.

My research has shown this case to be unparallel and unprecedented with respect to the length of time between the unfair labor act and the back pay specifications.

If counsel for the NLRB had eight years or seven years to prepare this specification, I would imply the court and counsel for the opposing side to give me five days to prepare the answer.

That's all.

JUDGE ROSE: Mr. Appell, it sure seems to me like the General Counsel has had enough time to prepare the specification, so that the Respondent could have been on notice prior to the time this proceeding started as to the nature of the allegation concerning this amount and as important, if not more important, the actual dollar amount.

Furthermore, of course, you are going to have to

reopen your case to prove the back pay specification, I should think.

I just can't get over the fact that you are asking me to preclude the Respondent from having a reasonable period of time to form his defense on a specification that amounts to in excess of 90,000 dollars.

We will be in recess until 1:30.

I am going to ponder this.

(Lunch recess taken at 12:01 P.M.)

JUDGE ROSE: We will be on the record.

Well, with regard to this matter of recessing the hearing, Mr. Siskin, I think you have a well taken point frankly, and due process would require that.

However, I am not going to allow it for this reason, the reasons that are not the Respondent's fault, and which reasons which I don't know or understand -- more than five years has elapsed since the Circuit Court entered its judgement enforcing the Board's order until the present time.

I am advised administratively that as a result there's in ordinate delay.

The Circuit Court entered the mandamus injunction against the Board requiring the Board to act forthwith in determining thsi back pay matter.

I therefore, feel it would be inappropriate for

me to recess the hearing in view of the fact that -- of that order.

I will, however, -- you can be assured I will take into consideration that fact that you have not had an adequate opportunity to prepare your defense and file an answer with regard to this specification in ruling on the substance of that specification.

And if it appears to me, as I decide this case, that as a result of you not having appropriate time to meet the specification, I will reject it.

I think that's the best I can do under the circumstances.

MR. SISKIN: Do I understand, sir, that I am bound to submit an answer by tomorrow with respect to these?

JUDGE ROSE: No.

You are not bound to submit an answer by tomorrow.

You should have your answer on file before the close of the hearing, but I don't think will be tomorrow.

MR. SISKIN: Okay.

I strenuously object, Your Honor.

I appreciate Your Honor's good intentions on the subject and sincere approach.

However, it will be unduly prejudicial to Respondent's to proceed at this point.

We have no way of caucusing with our 19 or 17 defendant Respondents, and it will unduly prejudice the Respondent's,

Your Honor, in its defense to this matter.

May I add further that all the evidence to this is with Respondents and the union.

The union is on record through its delegate that he has "been unable to ascertain any of the records of the union," Mr. Levi has testified in this proceeding, and I can put it on the record, that the conversations with the union and the conference with the -- that he had with the union and any members he had played a substantial part in its specifications.

And that's on the record, by the way; and I again reiterate that I renew my request for an additional adjournment.

JUDGE ROSE: Very well.

Anything else?

MR. APPELL: Your Honor, I should like to state that we believe that we should go forward for the reasons that I stated before the lunch break.

I don't believe this determination unduly prejudices the Respondent's for the reasons I stated earlier.

JUDGE ROSE: I would have no hesitancy in granting reasonable time for the Respondent to prepare his defense with regard to this matter which I consider to be one of substantial substance but for the fact there has been an order by the Circuit Court in this very case.

Let's proceed, gentlemen.

MR. SISKIN: You have your witnesses?

MR. APPELL: Yes.

I would like to recall three witnesses briefly, Your Honor, on this particular point and one would be Mr. Sapadin.

JUDGE ROSE: Is this a witness whc has previously testified?

MR. APPELL: Yes, Your Honor.

JUDGE ROSE: Have a seat.

Let me remind you you have been previously sworn in this matter and you are still under otaht.

Whereupon,

SAUL SAPADIN

having been previously sworn, resumed the stand and testified further as follows:

JUDGE ROSE: What's your name again?

THE WITNESS: Saul Sapadin.

MR. APPELL: Your Honor, at this time I ask the -- that the Reporter mark these two W-2 Forms as General Counsel's Exhibits 15 and 16 respectively.

(Whereupon, General Counsel's Exhibits 15 and 16 were marked for identification.)

JUDGE ROSE: General Counsel's Exhibit 1-N is received.

(Whereupon, General Counsel's Exhibit 1-N was received in evidence.)

DIRECT EXAMINATION

Q (By Mr. Appell) Mr. Sardin, I show you General Counsel's Exhibit 15.

Is that W-2 Form the form that you received from the Bagel Bakers Fund?

(Handing.)

A Yes.

Q You want to keep your voice up, please.

A Yes.

Q The amount on this W-2, is that the amount you received from the union in 1966, $590.06?

A Yes.

Q I now show you General Counsel's Exhibit 16 for identification.

Is this a W-2 Form that you received from the union for the year 1967?

(Handing.)

A Yes.

Q The amount on there is $88.50, is that the amount that you received from the union in that year?

A Yes.

Q And what was your job title in those years in the industry?

A Kettleman helper.

MR. APPELL: At this time, Your Honor, I offer General Counsel's Exhibit 15 and 16 into evidence.

JUDGE ROSE: Any objection?

MR. SISKIN: No objection.

JUDGE ROSE: Very well.

G.C. 15 and 16 are received.

(Whereupon, General Counsel's Exhibits 15 and 16 were received in evidence.)

MR. APPELL: I have no further questions of this witness.

JUDGE ROSE: Cross examination?

CROSS EXAMINATION

Q (By Mr. Siskin) Mr. Sapadin, do you know how the vacation pay and holiday pay was computed in 1967?

A No.

Q Do you know how it was computed in 1966?

A No.

Q Was it different for the kettleman than it was for bakers?

A Yes.

Q In what way was it different?

A Kettleman received less.

Q And was it based on a formula that -- in any of the years '66 or '67?

There a method of computing it?

A Every year, I guess -- kettleman always received less than the baker.

JUDGE ROSE: You are excused, Mr. Sapadin.

Call your next witness.

(Witness excused.)

MR. APPELL: Joseph Silverman.

Whereupon,

JOSEPH SILVERMAN

having been previously sworn, resumed the stand and testified further as follows:

JUDGE ROSE: Have a seat, Mr. Silverman.

Let me remind you that you have been previously sworn in this matter and you are still under oath.

THE WITNESS: Yes, sir.

JUDGE ROSE: Proceed.

MR. APPELL: Your Honor, at this time I ask that the Reporter mark two documents as General Counsel's Exhibits 17 and 18 respectively.

(Whereupon, the above-described documents were marked as General Counsel's Exhibits 17 and 18 for identification.)

DIRECT EXAMINATION

Q (By Mr. Appell) Mr. Silverman, at this time I show you General Counsel's Exhibit 17 which is marked for identification, and I ask you to look at the third item on this page from the top.

Is that an accurate copy of your 1966 W-2 Form from the Bagel Bakers holiday and vacation pay fund?

(Handing.)

A Well, I wasn't prepared to testify.

I didn't bring my books but this seems to be the amount.

I know it was over 12 hundred dollars.

This I know, the exact amount 3,976, I can't remember.

Q Is this a copy of a W-2 Form that you received from the union that year?

A I believe so, yes.

Q I show you General Counsel's Exhibit 13 for identification.

I ask you to look at the second item down from the top.

Is that an accurate copy of your W-2 Form from the union for 1967?

(Handing.)

A In view of the fact I haven't got my copies it looks very much like it is.

Q To the best of your recollection, is the amount there that you received?

A The amount is about $224, yes.

MR. APPELL: At this time, Your Honor, I offer General Counsel's Exhibits 17 and 18 into evidence, with particular reference to the copies of W-2 Forms from the union holiday and vacation pay fund.

JUDGE ROSE: Any objection?

THE WITNESS: May I say something?

MR. APPELL: No.

JUDGE ROSE: No.

(Pause.)

JUDGE ROSE: I am going to overrule your objection, Mr. Siskin.

These documents appear to be authentic, and they are consistent with the other testimony on this subject.

G.C. 17 and 18 will be received into evidence.

(Whereupon, General Counsel's Exhibits 17 and 18 were received in evidence.)

MR. APPELL: I have no further questions of this witness, Your Honor.

JUDGE ROSE: Cross examination.

CROSS EXAMINATION

Q (By Mr. Siskin) Mr. Silverman, do you know whether there was any difference in computation between 1966 and 1967 vacation and holiday pay?

A There was a change.

Q Are you familiar with the formula for both of the years?

A To a degree.

Q Well, how did you obtain your familiarity?

A Well, one thing in '67, the change you ask about, that was very obvious one, because they started to give us our vacation money on a daily basis, and they put it

on a daily basis, and they put it right on our pay.

They gave us three and a half dollars a day, a practice which still continues.

Everyday we work we go t an extra three and a half dollars towards our vacation pay.

This is something that I actually came in contact with.

Q All right.

And you know what it was in 1966?

A I don't understand your question.

Q Do you know what the formula was in 1966?

A Well, I wasn't in on the executive board or anything or the council but as I recall it -- this is ten years and you will have to bear with me a little bit -- as I recall it, it was on a production basis, a per box basis.

I worked at the Bagel Wheel for one place and I worked for other places, and I was in the Bagel Wheel, I was shop steward and they sent down a form that I have to fill out to tell how much boxes we made, and this -- from this form they derived how much the employer had to give him.

It was a per box basis -- production basis.

Q Now, can you tell us, whether you collected holiday and vacation pay in 1967 based upon full days, half days, part days and how would it be allocated by employers?

A I don't know that.

You have to come clear with that question.

Q How would the vacation and -- vacation pay commitment be allocated between one or more employers in a given day?

A Well, when we reached a point where I told you we got three and a half dollars a day, it didn't matter what we made -- how much we made that day.

We worked ten minutes or we worked ten hours, we got three and a half dollars for that day.

That was our vacation pay, you understand.

The other thing was on a per box basis until February 1st, '67, as I recall.

Q Your earlier year, '66, you mean?

A Up in February 1st, '67.

Q Are you aware of the percentage computation, if any?

A No, I am not aware of the percentage.

Q Did that appear in any union contract?

Do you know whether that appeared in any union contract?

A I don't recall how it appeared.

It must have been there because they complied with it, the bosses, but I don't recall and I cannot tell you.

I just don't recall.

Q Until you came here today did you have any preceding knowledge or information of this obtained from any written instruments as to how the formulas were computed or

RALPH BREIER

having been previously sworn, resumed the stand and testified further as follows:

JUDGE ROSE: Mr. Breier, take a seat.

Let me remind you you have been previously sworn in this matter and you are still under oath.

DIRECT EXAMINATION

Q (By Mr. Appell) Mr. Breier, did you receive in 1966, the year before the lock out, money from the Local 338 Bagel Bakers Holiday and Vacation Pay Fund?

A Yes, sir.

Q Do you remember how mucy you received?

A Approximately 12 hundred dollars -- some odd dollars. 1,239, 1,249.

Q Did you receive money from the same fund in 1967?

A Yes, sir.

Q Do you recall how much you received that year?

A Not offhand.

But it was several hundred dollars.

Q Do you know if it was over two hundred dollars?

A Yes.

Q Do you know if it was over three hundred dollars?

A I'd say around 400 hundred dollars approximately.

Q Do you currently have in your possession any forms that show how much you received?

JUDGE ROSE: Well, you are going to have to put on some kind of a case.

MR. APPELL: Yes.

JUDGE ROSE: Do you have any objection to Mr. -- Mr. Siskin, other than on the substance -- I mean --

MR. SISKIN: I understand, Your Honor.

Procedurally, yes, Your Honor, I would object until I submit my answer.

Any effort to go forward with Mr. Levi's testimony before my answer is submitted, I feel it would unduly prejudice my case.

MR. APPELL: Frankly I thought Mr. Levi's testimony might help Respondents in framing their answer.

MR. SISKIN: I prefer -- I think my defense should be planned by myself and not by anybody else, Mr. Appell.

And I respectfully suggest that Mr. Levi's testimony not be heard until I submit my answer.

JUDGE ROSE: Very well.

Proceed, Mr. Siskin.

MR. SISKIN: Mr. Morris Skolnick.

Whereupon,

MORRIS SKOLNICK

having been called as a witness, and having been first duly sworn took the stand and testified as follows:

JUDGE ROSE: Please be seated.

State your name and address for the record.

THE WITNESS: Morris Skolnick, 68 Country Drive, Plainview, New York.

DIRECT EXAMINATION

Q (By Mr. Siskin) Mr. Skolnick, how long have you been in the union -- how long were you in the union?

A 17 years.

Q And when did you start as a union employee?

A 1950.

Q And when you started, what was your job title?

A I started out as a rank and file member, and then after that I became an executive board member.

Then I became the president of the local.

And I was on every negotiating committee from 1952 up until 1967.

Q And can you tell us in addition to being president, were you on any committees of the union?

A On most of them, yes.

Q Give us the names of some of those committees?

A I was on the negotiating committees, I was on trade committees.

Whatever various committees that were formed by the local union.

I was a trustee of the welfare at one time.

I was a trustee of the general fund.

So they would throw the contract at him and showed him we didn't have to make more than 100 boxes.

Q Now, did there come a time when there began to be an exodus of employees from the union while you were in the union?

A Yes,

Q And — can you fix that point in time?

A Around the middle of 1966, around the srping, let's say.

Q Do you know of your own knowledge, at that point and through the rest of the year, how many employees left the union?

A At least 30 of them.

Q Now, what was the procedure used by the union to verify vacation pay and holiday pay?

Were you aware of any -- of that procedure?

A Yes.

Q Will you tell us what the procedure was?

A Well, the procedure on the vacation money was based on production -- on a production basis.

Q When was this?

A At all times before 1967.

Everything was based on production in every shop. The more a man produced, the more he paid into the vacation holiday money.

Q The more money -- the more management paid into the --

A Management, right.

All this money went into sort of a pool up in the local union and they were divide this up and sub divide the amount of membership into this pool.

That was the whole basis of the vacation holiday money.

One year we got more, one we got less.

If there was less mebers we got more.

In 1966 there was such a exodus of member in the middle of the year that left more money to split up between the rest of us.

Q Now, can you tell us how the system changed in '67?

A In '67 it started to change after I left.

Instead of production -- because there was no production, so they went from production basis to per day basis.

Q And is it fair to say, to the best of your knowledge, that if a man had worked for one employer three or four days or five days a week, there was never any compounding of that pay?

A No, they -- there wouldn't be.

Q Only one employer would pay one pay, right?

A That's right.

Q Per day under the system as it existed in '67?

Per day?

A I don't know.

About '67 I am not sure.

I only stayed there -- the beginning of October -- the end of January.

Q Now, in 1966 do you recall the exact precise method of computation?

A For vacation holidy money?

Q Yes.

A Just what I stated before.

It was strictly on production basis, the amount of production boxes that a man produced, he sent, amount of dollars up to the local union, it was pooled, and then the amount of membership divided it amongst ourselves.

The kettleman or baker's helpers as they were called got less.

Q And were you familiar with the contract -- the agreement forms that were finally -- that were executed, rather, by members of the -- in the industry beginning February 1967 between the Bagel Bakers Union Local 338 and those shops that did sign?

A In 1967?

Q Yes.

A I am not familiar with it.

Q Now, do you know the difference between kettleman and bakers on the computation of vacation and holiday pay?

A There again the kettleman, they also -- all the money that was sent up for kettleman, it was pooled and divided amongst the kettleman.

The exact figures I don't remember.

Q Well, was the kettleman much less than the bakers?

A Much less.

Q Now, will you tell us who verified the vacation holidy pay computations that management had?

A It would be -- it would have been the financial secretary of the union.

Q And do you know whether auditors were sent out?

A Never.

Q Was any record kept by union employees -- do you know whether any records was kept by union employees of the production or the days that they would have?

A No.

Q Now, based upon your knowledge in the -- as a union man and in the industry, are you prepared to say what the normal work hours or the normal pattern would be for a given man in the industry figuring 100 boxes a day?

A That was before 1967?

Q Before 1967, yes.

A The normal?

Q Yes.

A Well, it would vary.

that these men were -- that you were not getting sent any men at all to come back to work?

A I did.

I called him and I asked him what happened to his men.

He said, the men refused to come in to work, I don't have enough work for them.

Q When was that?

A This was about a month or a month and a half after we had taken them back.

Q Now, in addition to the names of the men that you said -- you mentioned before that came back, were there other relief men or weekend men that came in?

A I think there were five or six altogether.

I'm pretty sure there were five.

Three I mentioned that I know offhand. The other two I would have to look up.

MR. SISKIN: I have no further questions of the witness at this time.

CROSS EXAMINATION

Q (By Mr. Appell) Mr. Cohen, did your business fall off in 1965?

A No.

Q Did it fall off in 1966?

A Yes.

beginning of February, 1967?

A At the time, I would say so.

Q When you referred to a strike before, you were referring to what the Board found was a lockout, is that correct?

A That's correct.

Q And then you and your partner began making bagels, right?

A Yes.

Q Then did you continue to make bagels throughout '67, personally?

A Well, we had to survive.

Q Just answer, yes or no?

A Yes.

Q In 1968, did you continue to make bagels throughout the year?

A No.

Q When did you stop?

A Well, we had taken the Union back.

Q Then you stopped making them?

A We completely stopped.

Q How about your partner?

A He stopped, too.

Q Did you have any other employees who were not members of the Union, in 1968?

A Well, at the time that the Union came in, the Union made every bagel that we had on -- that was made on the premises. Nobody else made the -- or baked a bagel in there.

Q Now, are you certain that it was Haimowitz, Ralph Bryer, and Julius Ostrofsky, who returned to your shop?

A Yes.

Q Do you know how long each of those men worked in your shop?

A Well, I have the records of it.

I don't have them with me, but I'm pretty sure we have it.

I would say, it's roughly a month or so.

Q Then what didyou do after these men didn't come back?

A Well, I couldn't get the Union to send in any men, so I had to help myself.

I tried to get some people to come in that were able to make bagels.

Q What are their names?

A Their names?

Sol Seidner, S-E-I-D-N-E-R, and --

Q Was he a Union member?

A At that time, he belonged to another Union.

Q Who else?

A And Joseph -- I don't remember his second name. We

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Q Did you owe any notes or loans to third parties other than the bank?

A No.

Only I owed money to myself, which I put into the business.

Q What is the situation today in your business ?

MR. APPELL: Objection.

JUDGE ROSE: Mr. Siskin, what's this go to?

MR. SISKIN: Well, I believe we're talking about trends, Your Honor.

I just wanted to see whether the trend had changed.

JUDGE ROSE: Sustained.

MR. SISKIN: I have no further questions.

JUDGE ROSE: Mr. Appell?

CROSS EXAMINATION

Q (By Mr. Appell) Mr. Schilowitz, prior to 1968, did you have any retail business?

A Retail business?

Well, I'll tell you about my retail business.

MR. SISKIN: Objection.

Did you mean '68 or --

MR. APPELL: Prior to '68.

THE WITNESS: The bakers I had wouldn't even want me to do retail business.

JUDGE ROSE: Overruled.

THE WITNESS: Because they would come in to bake,

lockout?

A Just, as I say, they were picketing in '67. They were picketing for nine months.

Q So, you had no business?

A Only in the evening, when they walked away.

Q What kind of business did you have then?

A A retail business.

Q Retail?

A Yes.

Q Did you continue to bake --

Did you bake in '67, during the lockout?

A During the lockout?

Q Yes.

A Sure, I baked.

Q In '68, did you continue to bake?

A Yes, sur.

Q Was there ever a time in '68 that you didn't bake?

A In '68?

Q Yes.

A No. No.

Q You baked right through?

A Yes.

Q Were you doing baking at the time Schechter came in, isn't that correct?

A I didn't bake.

Q February 1967, and after.

A I didn't have any wholesale at that time.

Q You had retail?

A Yes, sir.

Q Did Brackabovich and Fertel, and Reiner and Stone, Anutin and Napolitano and Shadletsky, all work for you right up until the lockout (phonetic spellings)?

A Right up to the weekend of December 30, 1966.

Q Now I am asking you about January, 1967. The lockout started on February -; did they all work for you right up unitl the lockout regularly?

A I don't know if it was them or somebody else.

Q But you had that number of men working regularly?

A At that time; yes.

Q Then after the lockout started, did you or any of your partners start to bake bagels yourself?

A Me, my brother and my son started to bake.

Q Did you continue to do that thereafter?

A Yes.

Q Do you still do it today?

A Yes.

Q Did you do it even when Mr.Napolitano came back in 1968?

A No.

Q You had stopped?

A We didn't stop completely. He did part of the work and we did part of the work.

Q You had never done part of that work before the lockout, did you?

A Before th e lockout?

Q Yes.

A No.

Q So, in other words, this was something new now that you had instituted, and you kept it going?

A I was forced to do.

Q Your answer is yes, you did?

A I did.what?

Q You started this-- this was something new after the lockout, where you and your partner started doing baking ?

A Yes.

Q Did your other -- Who are your other principals in the company?

A At that time my brother, Morris Rubenstein, and my son, Stuart.

Q Did they all engage in baking during the lockout?

A Baking; making and baking; yes.

Q And they continued to do that after the lockout in 1968?

A Yes.

Q After Mr. Napolitano came back, is that correct?

A Yes. But not to the--not as much.

Q Okay. But they did?

A He did not have the work and we did a little bit of it. We did the baking so we can have hot bagels for the retail.

Q Do you have records to show who did how much production in 1968, after Mr. Napolitano reported back?

A You mean how much our production was?

Q Yes.

A No. I don't have records. It was a family business.

Q And none of you, Morris or Stuart, had ever done this before the lockout, isn't that correct?

A No. They never let us do it.

Q Okay.

A The union never let us go over to the oven to bake or make a bagel.

Q At the time Napolitano left in April, you and your relatives were baking; isn't that correct?

A That is correct.

Q And making?

A Yes.

Q And you have no records to show what percent you people were doing, the Rubensteins, as opposed to Napolitano?

A No. I don't have any records.

Q And the reason he left was because he was not getting enough work; isn't that correct?

A That is what he said.

W He told you that?

A Yes.

Q Did you ever hear from the union about that afterwards?

A No, I did not.

Q Did you ask the union to send anyone else in?

A No.

Q So that after he left, you and your relatives continued to make and bake bagels on your own?

A Yes.

Q And that is what you do to the present day?

A Correct.

MR. APPELL: Your Honor, I am sorry, I forget whether I asked the witness if he asked for anyone from the uni after Napolitano left.

Q Was your answer to that no?

A No.

MR. APPELL: I have no further questions, pending production of additional records, your Honor.

JUDGE ROSE: Mr. Siskin?

MR. SISKIN: Yes.

P R O C E E D I N G S

JUDGE ROSE: Let's go on the record.

Mr. Siskin, do you want to call your next witness.

MR. SISKIN: Arnold Newkofsky, please.

Whereupon,

ARNOLD NEWKOFSKY

called as a witness, having been first duly sworn by Judge Rose, testified as follows:

DIRECT EXAMINATION

BY MR. SISKIN:

Q Would you please state your full name?

A Arnold Newkofsky.

Q What's your home address?

A 265 Brigham Street, Brooklyn, New York.

Q Mr. Newkofsky, did there come a time when you went into business for yourself?

A Yes.

Q Can you fix that point in time?

A The exact time, I haven't got no knowledge of. I think about 1969, I guess, 1969 or 1970.

Q Did you ever go into business in 1967 or 1968?

A I don't think so.

Q Did you ever --

A I don't have the exact figures in front of me.

Q Did you work at 1805 Avenue U?

A That was my place of business, yes.

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MR. APPELL: May I see them, your Honor, at this time?

JUDGE ROSE: Excuse me?

MR. APPELL: I would like to see these records at this time.

JUDGE ROSE: For what purpose, Mr. Appell?

MR. APPELL: To see whether any of the customers that Mr. Chakofsky's company had were the same as those of the Neptune Bagel Bakery.

JUDGE ROSE: Very well.

Produce those records, will you, Mr. Siskin?

MR. SISKIN: The accountant is upstairs at this time.

MR. APPELL: I'll continue with my questioning then.

MR. SISKIN: When the accountant testifies, he will produce those records, your Honor.

JUDGE ROSE: I understand the account is going to testify, Mr. Appell, and that he will have those records with him at that time.

MR. APPELL: Yes, sir.

JUDGE ROSE: Is that all right with you?

MR. APPELL: Yes, sir.

BY MR. APPELL:

Q Now, the premises that you took over for your new business were all leased from Mr. Stern; is that correct?

A Yes, sir.

Q And they're still under lease with him?

A No, sir.

Q When did the lease terminate?

A We signed a new lease, Oscar Stern and I, about a year ago.

Q And then what happened?

A He terminated by transferring it over to his son.

Q I see.

A The lease now is between his son and I.

Q Did you acquire any new machinery when you went into business?

A New machinery?

Q Yes, other than that which you took over from Mr. Stern.

A Yes; I did.

Q And what kind of machinery?

A I bought a bagel machine.

Q When did you do that?

A Four or five years ago.

Q I asked when you went into business.

A No, no.

Q So that for the first, let's say, three or four years of your operation, the only machinery that you used or had in the premises was that which you had purchased

from Mr. Stern; is that correct?

A Yes.

Q Which machinery that you purchased from Mr. Stern or acuiared from Mr. Stern did you actually use in your first four years of business?

A Dough mixer, the oven.

Q Dough mixer and oven?

A Yes, sir.

Q Did you use the benches?

A We had to replace those. They were in bad condition.

Q Now, when you went into business, you were aware, were you not, that there was a lockout?

A Was I aware of a lockout?

Q Yes.

A Yes.

Q Were you aware that the union had brought charges with the National Labor Relations Board?

A No.

Q You didn't know that there was a case going on at the labor board?

A No, sir.

Q When did you first find that out?

A After I was in business.

Q About when?

A Oh, six months.

Q Were you aware that the shop that you had bought out

had been under contract with the union?

A Yes.

Q Were you aware that there were any -- well, tell us what Mr. Stern told you or what the Council told you or what your own lawyer told you concerning what the labor situation was at the time that you purchased into this new business?

MR. SISKIN: Objection, your Honor.

JUDGE ROSE: What's the basis of your objection?

MR. SISKIN: My objection is as to what the Council said.

I believe that's information from an attorney to client.

JUDGE ROSE: No, not necessarily.

Overruled.

A Repeat the question, please.

Q Can you tell us, sir, at the time you took over the business, what you were advised by Mr. Stern or by any lawyer in the matter or by the Bagel Bakers Council as to what the labor situation was?

A No, it was never discussed.

The only thing that there was that in the bill of sale of the business, he had stipulated, the corporation did anyway, that if there were any outstanding debts or obligations or liabilities, Oscar Stern would be

responsible for them.

That's in the bill of sale.

Q Well, how did you know that there was a lockout going on?

A I was part of the union.

Q And had the union ever told you that they brought an action or filed charges with the labor board?

A No.

Q You had no idea that that had been done?

A No, no.

Q Were you aware that there was some kind of an action brought in Court with regard to a lockout?

A No.

Q Did you ever see the union picketing during the lockout?

A Yes.

Q Did you see that they had signs saying: Unfair Labor Practice?

A No.

Q Did they picket your store after you went into business?

A Yes.

Q Do you remember what their sign said?

A No, I don't.

Q Did you ever talk to any of the union people about

A For me?

Q Yes.

A There was no work. There wasn't enough.

Q Now, during the lockout itself, is it correct that you were making and baking bagels?

A Yes.

Q And your partner was, too?

A Yes.

Q Krublit?

A Yes.

Q Did Krublit ever work for Oscar Stern, by the way?

A I don't think so, no.

Q And after the men were called back in February, did you do any baking then?

A I did only the baking. They didn't want to bake because we required maybe two or three boxes an hour, you know, which was strictly retail, you know, where we sold hot bagels over the counter.

They refused to do any baking at all. We did the baking ourselves. They did all of the bench work, they did.

Q Whose decision was it that you would be doing the baking?

A The mutual agreement between Harold Laskowitz and I.

Q Why was this?

CROSS-EXAMINATION

BY MR. KRAMER:

Q Mr. Chakofsky, what is your title with Neptune-Brighton?

A President.

Q Who are the other officers of the company?

A My partner, Robert Krublit, who is secretary-treasurer.

Q Were you the president in April of 1967?

A When it was formed?

Q Yes.

A Yes.

Q What was his position then, the same?

A The same.

Q Do you remember an attorney named Sherman Lawrence?

A Yes.

Q How long have you known Mr. Philip Levine?

A Philip Levine I know 30 years or 25 years.

I mean, I don't know him personally, but I have heard of him.

Q How?

A Well, I belonged to Local 338. He was the attorney for the Bagel Bakers Council for many years. That's how I know him.

Q I'm going to show you what has previously been marked as Oscar Stern's Exhibit 1, a contract of sale

dated April 20, 1967.

(Handing.)

A That's correct.

Q Do you recognize your signature on it?

A Yes.

Q Do you recognize the handwriting?

A No.

Q You don't know whose handwriting is on this document?

A No.

Q You're not aware of Mr. Philip Levine's handwriting?

A No.

Q Do you remember when your corporation was first incorporated and who -- do you remember what date?

A It could have been anywhere's between the time of that date on there until he opened up in June, I think, you know, some time during that time.

It might have been done immediately; I don't know. I don't remember at this time.

Q Who was the attorney who incorporated Neptune-Brighton?

A I believe it was Sherman Lawrence.

Q Do you recall when you started negotiationg with Oscar Stern for the purchase of Neptune Bagel Bakers?

A No.

Q Take a look at this contract of sale and see if that refreshes your recollection as to the date.

(Handing.)

A There is no date -- the only date here is the 20th day of April, 1967.

Q That's the document with your signature on it; right?

A Yes.

Not this particular page, of course.

Q No.

The last page of that document bears your signature?

A Right.

Q And the signature of your partner?

A Right, and Oscar Stern.

Q And Oscar Stern as president of Neptune Bagel Bakers?

A Right.

Q Now, looking at that document, will you please tell the Judge how many weeks or how many months prior to that date you started negotiationing with Mr. Stern for the purchase of Neptune Bagel Bakers?

A Oh, I don't remember that. I don't know whether it was a week or ten days or a month. I have no idea on that.

I mean, I -- this is the date -- I assume this is the date that I did purchase it.

When we purchased it, we had to go inside and work on it because it was not in any condition to open up. We opened up some time in June, I believe, you know, for

business.

What day I actually went to Oscar Stern and asked him if he wanted to sell the bakery, I have no idea. I don't remember that.

Q Are you aware that --

A Well, we are going back 10 years now. I don't remember, I really don't.

Q Are you aware that one week after this was signed, six days later, there was a closing at which you and your partner attended?

A After this was signed; right?

Q Yes.

A It's very possible, yes.

Q As a matter of fact, Mr. Chakofsky, Stern's Exhibit 2 is a bill of sale.

(Handing.)

A Right.

Q That bill of sale was executed on the date of the closing, April 26, 1967.

A In other words, a certain number of days between this and this; right?

Is that what you're saying?

Q That's what the documents say. You tell us.

A That's what it says. I don't recall exactly.

Q Look at the second --

A I'm not disputing these documents.

Q Look at the second document.

A Yes.

Q The second document is signed between two corporations, is it not?

So that by April --

A This is signed by Oscar Stern.

Q Look at the first page --

A And this is signed by --

Q Look at the parties on the first page.

A Neptune-Brighton Bagels, Inc.

Q So that by that time you were incorporated, weren't you?

A On that date. I guess I was. I don't know.

What date is that? Can you help me?

Q Take a look at the second page.

A April of 1967. Yes, then that's the date.

Q Now, when you purchased Neptune Bagel Bakers, you purchased a truck in the sum of $1,000, didn't you?

A Yes.

Q Did you --

A As I told you before, that was part of the agreement to buy the bakery, I had to buy the truck, too.

Q You had a lease with Mr. Oscar Stern?

A Yes.

Q Where did you send the leases -- where did you send the checks to for the rent under the lease?

A While Oscar Stern lived in Brooklyn, he came down himself and picked it up.

When he moved to Florida, it was mailed directly to him in Florida.

Two or three months ago he transferred the property, his assets, I guess, to his son in California. That's where I mail the checks now to.

Q Take a look at the top of Page 2, the closing statement, the day of the sale.

A Right here (indicating)?

Q Yes.

Oscar Stern as the landlord individually --

A Right.

Q -- under the lease, wasn't he?

A Yes.

Q I'm talking about the major lease that you paid rent under.

A Well, he owns the building.

Q Right.

A Right. I don't dispute that.

Q And when you were presented with a closing statement, who presented you with it?

Which attorney presented you with it?

A Well --

Q In other words, who prepared the closing statement for the parties?

A Philip Levine.

MR. SISKIN: I'd like to voir dire on that.

JUDGE ROSE: Well, we will wait until it is marked and offered.

MR. KRAMER: Would you please mark this as Stern's Exhibit 3 for Identification.

(The document above-referred to was marked Stern's Exhibit 3 for Identification.)

BY MR. KRAMER:

Q By the way, Mr. Chakofsky, do you remember how much you paid for the business?

A I think $35,000.

Q In addition to the $5,000 in good will, do you know what the rest of the -- do you know what the balance was, the $30,000?

A No, no.

Q Do you remember at the closing that there were certain documents signed?

A Yes.

Q A bill of sale?

A Notes.

Q That is, a bill of sale for the truck?

A I don't recall. I do know I did buy the truck.

That was part of the agreement that I had to buy it.

Q It was on the assignment and the assumption of the major lease?

A Whcih part are you showing me now?

Q The recitation of the documents side.

A Yes.

Q In fact, do you remember the receipt of Item No. 11, the certificate of doing business --

MR. SISKIN: Objection, your Honor.

Q -- under the name of Neptune Bagels?

JUDGE ROSE: Just a minute now.

There's an objection.

Don't answer that question.

Do you have an objection?

MR. SISKIN: Yes, your Honor.

JUDGE ROSE: What's your objection?

MR. SISKIN: I don't know whether this witness saw this or his attorney saw it. It's unclear from the line of questioning.

MR. KRAMER: I'm asking him --

JUDGE ROSE: The objection is overruled.

Answer the question.

A You are showing me something here that I never saw before.

JUDGE ROSE: Did you ask him whether he received the

A There was a time, yes. Let me give you a date. July 3, 1969, they sent in a Mr. Kenneth Becker, and July 4th, which is a busier weekend for that area, they sent nobody in.

I called up in the morning. I asked for --

Q Let me interrupt you.

In 1968 that never happened, did it?

A I'm sorry, this is '69.

MR. APPELL: I have no further questions.

JUDGE ROSE: Mr. Kramer?

MR. KRAMER: No questions.

JUDGE ROSE: I have a question or two.

Mr. Chakofsky, from the time you purchased this bakery, were you employed as a bagel baker?

THE WITNESS: In this particular bakery?

JUDGE ROSE: No; anywhere in New York City.

THE WITNESS: Yes, yes.

JUDGE ROSE: Whom were you working for?

THE WITNESS: I worked for Hempstead Bagels.

JUDGE ROSE: Was that a union shop?

THE WITNESS: Yes.

JUDGE ROSE: Were you a member of the union?

THE WITNESS: Yes.

JUDGE ROSE: Were you aware that there was a lockout by the counsel members?

THE WITNESS: The word "lockout," no, no.

JUDGE ROSE: Did you go to union meetings?

THE WITNESS: Yes, I did.

JUDGE ROSE: Was there anything ever discussed at those union meetings about a labor dispute between the Bagel Bakers Council and the union?

THE WITNESS: Well, the -- yes, but they wouldn't -- at the time, sir, when I was there, the word "lockout" was never mentioned.

JUDGE ROSE: Okay.

What was mentioned?

What did you know about the labor problem between the Council and the union?

THE WITNESS: The representatives of our union, the president did most of the talking and the delegates. They accused the Council of lying.

They said that they can afford to pay the wages they're paying.

Of course, at that time, I was led to believe that, too, because I was -- that I had been with Bakers and I was in the union and this is what they fed us and this is what we believed in, you know, but I saw the work was going down and down, especially in my shop where I was working, that I wasn't making a living practically any more.

My standard of living was dropping. I decided that I'll do like the rest of them were doing, to go in business for myself, in the retail.

JUDGE ROSE: You decided to go into work for yourself?

THE WITNESS: Right.

JUDGE ROSE: Did you ever work for any of the Council members?

THE WITNESS: What period of time?

Any time?

JUDGE ROSE: Say in 1966.

THE WITNESS: Yes.

JUDGE ROSE: And the first part of 1967?

THE WITNESS: Yes.

JUDGE ROSE: In January of 1967?

THE WITNESS: Yes.

JUDGE ROSE: Well, then were you locked out by one of the Concil members or were you told that you could not go to work for a Council member?

THE WITNESS: I was told not to come in, I was told.

I was told this by Harold Laskowitz. He called me up at home and told me not to go into work for this particular shop.

JUDGE ROSE: And when was that?

THE WITNESS: I don't remember an exact date.

JUDGE ROSE: Would that have been on or about February 1st of 1967?

THE WITNESS: It could have been.

JUDGE ROSE: Well, now --

THE WITNESS: He said something about having a strike, that we're going to have a strike, he told me, and don't go in and come back to the union. I did that.

JUDGE ROSE: Okay.

So you were aware, then, in early 1967 that there was a labor dispute between the Council members --

THE WITNESS: Yes.

JUDGE ROSE: -- and the union?

THE WITNESS: Yes.

JUDGE ROSE: You're telling us, however, you don't recall the word "lockout" having been used?

THE WITNESS: No, no, not the word "lockout."

In fact, I didn't even know what lockout was even at that time.

JUDGE ROSE: What?

THE WITNESS: At that time, I didn't even know what lockout was then. Most members didn't.

JUDGE ROSE: Now, in spite of the fact that there was a labor dispute between the Council and the union, you still joined the Council when you started -- when you bought that bakery?

THE WITNESS: Yes.

JUDGE ROSE: Why did you join the Council?

THE WITNESS: Well, like I said, I needed an attorney, felt I needed an attorney.

At the advise of Mr. Oscar Stern, he had told me that it would be a good thing for me to join the Council. I joined. This was at the time I bought the bakery.

He told me, "I think it would be a good idea for you to join the Council."

JUDGE ROSE: This is the person from whom you had bought the bakery?

THE WITNESS: Yes.

JUDGE ROSE: Were you aware that there was a labor dispute, some problems?

THE WITNESS: Yes, I knew there were problems.

JUDGE ROSE: You knew about that at the time?

THE WITNESS: Yes.

JUDGE ROSE: And so you knew that when you joined the Council, you were joining with the Council and their dispute with the union; is that right?

THE WITNESS: No, not particularly. I didn't look at it that way, you know.

JUDGE ROSE: What?

THE WITNESS: I didn't look at it that way, you know, that I was getting involved in something like this.

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JUDGE ROSE: But you were aware that there was a labor dispute?

THE WITNESS: Yes.

JUDGE ROSE: That's all I have.

Anything that I have brought out, anybody else wants to ask questions about?

MR. APPELL: Yes.

RECROSS-EXAMINATION

BY MR. APPELL (Cont'd):

Q When you did take over, were you not aware that there was a lockout, that the Council had told the men or the men had been told by the employers not to come in to work?

A I became aware of the word "lockout" and the meaning of it, I would say about a month after I had already purchased the bakery.

Q And how did you learn of that?

A At the Council meetings.

Q When did you first learn that the employers had told the workers not to come to work?

A Oh, I don't recall. I don't recall about that.

Q Was that before you took over the business?

A When I took over that particular bakery, it was closed.

What preceded with the Council and Oscar Stern and

THE WITNESS: Yes, sir.

JUDGE ROSE: You have been previously sworn in this matter.

Whereupon,

JOSEPH RUBINSTEIN,

was called as a witness herein, and having been previously duly sworn by the Administrative Law Judge, resumed the stand and testified further as follows:

DIRECT EXAMINATION

BY MR. SISKIN:

Q Now, Mr. Rubinstein: continuing where you left off in your testimony, did you bring back the records that Mr. Appell requested you to bring?

A I brought back whatever I have.

These are the production records which I was told to make a little clearer than they were.

I got them right here (indicating).

Q And did you recapitulate and doublecheck your --

A Yes.

Q -- summary?

A Yes.

Q Now, did you, yourself, prepare this production record summary for Rubinstein Bagels, dated January 1966.

A Yes, sir.

Q And was it extracted from your daily and weekly log

Q Or anything to do with the payroll -- well, the payroll records.

A Here they are (handing).

Q Now, can you refer to your production record, the log, that you maintained from which you extracted the information and put them on this production record?

A I'll have to get it for you from my papers.

Q You can get off the stand.

A Let me take them up to the stand with me.

Q That's a good idea.

Now, taking the week of January of 1966, can you tell us, Mr. Rubinstein, how many people that you had working for you in January of 1966 (handing)?

A Yes, sir.

In 1966 --

Q January of 1966.

A January of 1966?

Q Yes.

A At that time, I had -- I had seven bakers and two helpers.

Q And can you tell us, sir, what the weekly -- what the weekly payroll was in any week in that month of January of 1966?

A In money?

Q Yes.

A The payroll was -- I haven't got the total of money

down, I got it only in total of boxes, boxes baked, not money.

Q But you have the number of people; is that correct?

A Yes.

Q Do you have the number of hours?

A Yes.

Q How many hours was that in 1966, Mr. Rubinstein?

A I haven't got the total, I got each man broken down to the date, how many hours he worked per day.

I don't have the total number of hours. Excuse me.

I have the total of the payroll for that week.

Q Oh, you do have it?

A Yes.

Q Okay.

Can you give us that payroll total?

For what week is this?

A The week ending January 14th, 1966.

Q The total payroll?

A $3505 in gross pay.

Q Was that only baking labor?

A Baking and helpers.

Q And how many boxes were produced during that week?

A That week?

Q Yes.

A 3,510 boxes.

[1950]

Q Now, will you refer to any of the weeks in August of 1966.

A It would be the 8th month; right?

Q Yes, sir.

A 8/12, August 12th, week ending August 12th.

Q And how many boxes were produced that week?

A 2,058.

Q And can you tell us what the baking labor was during that week?

A 2,101.

Q And will you refer to the week of -- to any of the weeks in December of 1966?

A Week ending December 16th, 1966.

Q And can you tell us how many boxes were produced?

A 1407.

Q And can you tell us what your gross labor was?

A $1358.

Q Do you have a summary anywhere, MR. Rubinstein, of what your payroll would be by the months?

A No, I don't.

Q Now, do you have that log in '67, a log available like that for 1967?

A No, I dont.

MR. SISKIN: I have no further questions of the witness, your Honor.

JUDGE ROSE: Cross-examination.

CROSS-EXAMINATION

BY MR. APPELL:

Q Mr. Rubinstein, were you baking at all in 1966, yourself?

A No, sir.

Q In 1967, you don't know what the payroll amounts were, you don't have any records to show that here?

A Well, I didn't have any -- any people working for me, all we had was the family.

Q I see.

How about '68?

A The same thing.

Q Just the family?

A We did have some union men, but it must have been one man for one day a week, if I remember correct.

MR. APPELL: No further questions.

MR. SISKIN: May we go off the record for a minute, your Honor?

Mr. Levy had said to me that he had certain financial information from Mr. Rubinstein which I believe Mr. Rubinstein had given to the NLRB.

May we go off the record?

JUDGE ROSE: Off the record.

(Discussion off the record.)

THE WITNESS: Thank you.

JUDGE ROSE: Call your next witness, Mr. Siskin.

MR. SISKIN: Mr. Cohen.

JUDGE ROSE: Let me remind you that you have previously been sworn in and are still under oath.

THE WITNESS: Yes, sir.

JUDGE ROSE: State your name for the Reporter.

THE WITNESS: MEYER COHEN.

And I live at 134-54 Maple Avenue, Flushing, New York 11355.

Whereupon,

MEYER COHEN,

was previously duly sworn by the Administrative Law Judge, resumed the stand and testified further as follows:

DIRECT EXAMINATION

BY MR. SISKIN:

Q Mr. Cohen, did you bring with you certain records that you were requested to bring by Mr. Appell today?

A Yes.

I tried to locate what I possible could.

I brought them down with me.

Q And were those records in your possession somewhere in your offices?

A Yes.

[1958]

MR. SISKIN: All right.

At this point I defer to Mr. Appell.

CROSS-EXAMINATION

BY MR. APPELL:

Q Mr. Cohen, these are payroll records here?

A Yes.

Q 1967 and 1968?

A There is 1966 in there, too, I think.

This is '68 (indicating).

Q And this is '67 (indicating)?

A Yes.

Q And do you have '66, also?

A I believe so.

Let me check.

MR. SISKIN: Here is '66; I'm sorry (handing).

THE WITNESS: Do you have '66?

MR. SISKIN: Yes; I'm sorry.

BY MR. APPELL:

Q Before we get to that, do you have records which show your wholesale accounts in 1966, 1967?

A Yes.

I brought down the general route sheets that we have.

They are a little on the rough side, but I was able to locate them.

One of these books indicates the chains that we serviced and for the amounts that each one took.

A Yes.

Q And do you know if you have any such book for 1966?

A No, I don't.

I looked.

This is the only thing that I was able to find.

Q Can you show me which are the payroll records for 1968?

A I think they are over here somewhere.

I think this would be it.

Q Now, you made bagels in 1968, you baked bagels?

A Whether I, personally, made them?

Q Yes.

A Well, after the men walked out, we had to make them ourselves.

Q And that would be in 1968?

A I think so.

Q Why did Mr. Haimowitz stop working after April 5th, 1968?

A Well, at that time, he was working for us up to this period of time, then he felt we did not have enough work for him.

Q Did he tell you that?

A Yes.

Q Were you baking at that time while he was working?

A F T E R N O O N S E S S I O N

(12:25 o'clock, p.m.)

JUDGE ROSE: On the record.

Mr. Appell.

MR. APPELL: Your Honor, at this time I wish to call Mr. Levy as part of the general counsel's case, with respect to the amendment.

JUDGE ROSE: Very well.

Have a seat, Mr. Levy.

Let me remind you that you have been previously sworn in this matter and you are still under oath.

THE WITNESS: Yes, sir.

JUDGE ROSE: State your name to the Court Reporter.

THE WITNESS: Sidney Levy, L-e-v-y.

JUDGE ROSE: Oh, one point, gentlemen, before we take Mr. Levy's testimony.

This may be in the record, but if it's not, I would like for you all to agree to a stipulation concerning the retail price of bagels in 1966 and in 1967, which I understand was seven cents, or 84 cents a dozen.

MR. SISKIN: We will so stipulate, your Honor.

JUDGE ROSE: Mr. Appell?

MR. APPELL: Your Honor, I really don't have knowledge.

JUDGE ROSE: I would like for you to find out.

I want that to be a matter of evidence in this case.

Q Mrs. Lewis, do you recall when you took back the union employees?

A Yes.

Q And when you took back the union employees, did you have to sign some sort of agreement with the union?

A Yes.

Q And what did that union agreement — and when was that date, by the way?

A They came back to work on a Tuesday night.

It was — Mr. Levy has the date.

I think it was the — what was it? Was it the 5th?

On a Tuesday night it was.

Q What months?

A In June.

Q June of what year?

A 1967.

Q Okay.

And did you and the union enter into an agreement with respect to vacation and holiday pay?

A Yes.

Q What was that agreement?

A They were going to get 3.50 for a baker and 2.50 for a kettleman, or a helper.

Q And was that pursuant to negotiation between you and the union?

A No.

That was the industry, everybody was paying that at that time.

Q In 1967?

A Right.

MR. APPELL: Your Honor, I move to strike the statement that everyone in the industry was paying that, unless the witness can --

JUDGE ROSE: Sustained.

Proceed, Mr. Siskin.

MR. SISKIN: All right.

BY MR. SISKIN:

Q Can you tell us, Mrs. Lewis, did the union take back a copy of that agreement that reflected that?

Did you sign an agreement with the union?

A Yes.

Q And did the union take back a copy of that agreement?

A RIght.

Q Who signed the agreement in behalf of the union?

A Well, Mr. Laskowitz brought it.

He was supposed to mail it back to us.

Now, I don't remember if he actually signed it in front of us or it was just agreed that these were the terms.

It was the same contract for everybody.

We didn't have a special contract.

Q All right.

A And that's why I would say that for everyone, that's why I would know that the others had the same.

There wasn't a different contract for this one and a different one for this one.

Q And how did you know that others in the industry had that agreement?

A Because the men who worked by us worked in other places, too, and they would get the same rate of pay if you worked here or you worked here, wherever you worked, you know, everyone paid the same.

Q And was this discussed between you and Mr. Laskowitz as to it being the practice in the industry?

A He didn't say to me -- he said that this is what it is, if you want the men to come back to work, you know, you have to pay them 26 cents a box and you have to pay the man at the end of the week $3.50 a day for every day that he worked.

Q And did the agreement provide for 26 cents a box?

A 26 cents a box, yes.

Q On a hundred box basis?

A Yes.

Q As finally executed?

A Yes.

Q Was that on a per hundred basis or was that per box

regardless of the hundred boxes minimum?

A We always had more than a minimum.

I don't remember -- you know, we never had that problem.

Q But was the rate 26 cents a box?

A A box, right.

Q When it was finally executed?

A Right.

Q And was the -- and what was the formula that was used, Mrs.Lewis, for vacation and holiday pay?

A Every day that a man worked , you had to pay him $3.50 included in his check for each day that he worked.

If he worked four days, then he gets $14. If he worked three days, he got $10.50.

Q And how about kettlemen?

A They had $2.50 a day.

Q And pursuant to that arrangement, Mrs. Lewis, did you make payments to the holiday and vacation fund?

MR. APPELL: I object to that, your Honor.

I --

JUDGE ROSE: Sustained.

BY MR. SISKIN:

Q And following that, Mrs. Lewis, did you make payments to the holiday and vacation fund?

MR. APPELL: Your Honor, I object to this entire line of questioning.

can be laid.

JUDGE ROSE: Sustained.

BY MR. SISKIN:

Q Will you tell us what you did to conform to the 3.50 and 2.50 payment method?

Did you make payments at the rate of 3.50 per day and 2.50 per day?

A Right, whoever worked, in his check, included in his check was added either 3.50,10.50 or $14, whatever he worked.

Q Was that in lieu of the vacation and holiday fund that had existed prior to that time?

A Before, right.

Q Now, when Mr. Laskowitz came over to your office, what did he say to you and what did you say to him after you said you were willing to take back the employees to work?

A Well, he said that we would have relief.

The problem was that we couldn't keep the men and keep the route.

He said that we would have a relief and that my husband was going to be allowed to get paid for what he was making and the men would be getting less money and we wouldn't have the holiday and vacation fund any more.

Q And did he say anything else to you as to any other shops at that time?

PROCEEDINGS

JUDGE ROSE: We will be on the record.

MR. SISKIN: I call Manuel Kalkstein to the stand.

JUDGE ROSE: Let me remind you that you have been previously sworn and you are still under oath.

MANUEL KALKSTEIN,

having been previously duly sworn, resumed the stand and testified further as follows:

JUDGE ROSE: State your name and address for the record.

THE WITNESS: Manuel Kalkstein, 1676 66th Street, Brooklyn, New York.

EXAMINATION

BY MR. SISKIN:

Q Mr. Kalkstein, did there come a time when you caused the dissolution by filing of a certificate of dissolution of Culver Bakery, Inc.?

A I did.

Q What was the year?

A 1968.

Q Did you bring with you today a State of New York photocopy of a division of corporation State records?

A I did.

Q Receipt?

A I did.

MR. SISKIN: I offer that as the respondents next exhibit.

JUDGE ROSE: That will be Respondents' 62.

(Documents were marked Respondent's Exhibit 62 for identification, as of this date.)

MR. SISKIN: I want to offer this in evidence.

MR. APPELL: No objection.

JUDGE ROSEN: Respondents' 62 is received in evidence.

(Exhibit 62 for identification was received into evidence, as of this date.)

Q Following the dissolution of that corporation, did that corporation cease all activities in New York State?

A Yes, sir.

Q And has not ever started again, isn't that correct?

A No, never.

Q Did you cause the assets of that corporation to go into another corporation?

A Yes.

Q The premises were sold, is that not correct?

A They were sold.

Q Who were they sold to?

A Culver, MacDonald, Bagel Bakery.

Q Do you have any interest in that company?

A No.

BEST COPY AVAILABLE

Q Did you bring with you certain summaries today?

A I did.

Q Of your financial operations?

A I did.

Q Do you have those with you?

A I left them right near Mr. Glass, all of those, yellow copies.

JUDGE ROSE: Just a minute, Mr. Siskin, I want to get the parties respective positions with regard to liability of Culver in this matter, Mr. Siskin.

MR. SISKIN: It is my position on behalf of the corporation that the corporation is now defunct and I am perfectly willing to have a judgment rendered against it but the corporation has no legal status in New York at this point in time.

It has now been eight years since the corporation was dissolved.

JUDGE ROSE: What do you contend about who should pay back pay liability?

MR. SISKIN: I will state for the record that it is our position that the judgment will be rendered against a defunct corporation and I don't believe the judgment passes to any stockholders.

JUDGE ROSE: What is your position, Mr. Appell?

MR. APPELL: Your Honor, it may well be if Culver

MR.APPELL: I move to strike this testimony.

THE WITNESS: Everybody was affected by them. That is the one that affected me and there were a couple of bakeries in our area that were associated with another local; they did the same thing.

MR. APPELL: I move to strike that testimony.

JUDGE ROSE: Sustained.

MR. SISKIN: I have no further questions of this witness.

We have certain exhibits, Mr. Appell, which you can refer to and I may object to them.

JUDGE ROSE: Mr. Appell.

MR.APPELL: If I may have a moment, your Honor, to look at some exhibits.

JUDGE ROSE: We will be in recess for about five minutes.

(Short recess taken.)

JUDGE ROSE: On the record.

MR. APPELL: I have no questions, your Honor.

JUDGE ROSE: Let me ask a couple of questions about the employees that were required to bake 100 boxes of bagels.

BY JUDGE ROSE:

Q There has been some testimony along these lines and I just want to make sure I have it straight in my own

mind.

As I understand it the basic setup in these bakeries was to bake, for instance, 100 boxes of bagels which would require two benchmen, a baker and a kettleman, is that right?

A To make and bake?

Q To make and bake.

A Yes.

Q In other words, to produce 100 boxes of bagels?

A That was in the contract going way back and it was called a set that would be the minimum guaranteed per man, that each one would get involved in, in that 100 boxes.

Q So the personnel involved is two benchmen, two makers, one baker and one kettleman?

A Right.

Q I don't want to test your memory too hard on things that happened ten years ago, but as I look over the contract what this means roughly in terms of wages, to bake 100 boxes of bagels the payroll would be about $100?

A Close to it, figuring that each man would get, let's say, if the price per box at that time was 27 cents a box for arguments sake, I don't know exactly what it was 27, 26 or 28, I am not sure. But that would be multiplied by three and then the kettleman who would be on a hourly basis or daily basis and his salary would not reflect on the number of boxes baked. The kettleman would not have a reflection

on the number of boxes baked.

Q But if you keyed in what the kettleman made per box it would be around half of what the baker or maker would be?

A Approximately, it would be less than $100. I think that it would be less. No, just about that.

Q Just about $100?

A Just about that.

JUDGE ROSE: Okay.

Is there anything else of this witness?

MR. APPELL: No, your Honor.

THE WITNESS: Can I offer something with regard to your question?

JUDGE ROSE: Yes, please do.

THE WITNESS: That would be in the normal course of operation if you had 100 boxes or more.

There were many instances when you did not have 100 boxes, mostly in the middle of the week this occurred in many of the bakeries.

I know for a fact in our bakery on Monday, Tuesday or Wednesday we only had 50 or 60 boxes. So what the union did and we concurred with that, is they only sent in two men instead of a set of three and they would each make, the two men at the bench would make 50 boxes, one man would finish off making 50 boxes and the other man 50 boxes

(Discussion off the record.)

JUDGE ROSE: On the record.

Mr. Siskin.

MR. SISKIN: Yes.

Mr. Wolin, please take the stand.

SOL WOLIN,

having been first duly sworn by Judge Rose, was examined and testified as follows:

JUDGE ROSE: This is your first time on the stand?

THE WITNESS: Yes.

JUDGE ROSE: Then I will have to administer the oath.

Do you solemnly swear that the evidence you are about to give will be the truth, the whole truth and nothing but the truth, so help you God?

THE WITNESS: I do.

JUDGE ROSE: Be seated and give your name and address to the reporter.

THE WITNESS: Sol, S-O-l, Wolin, W-o-l-i-n, 1056 Westwood Road, Woodmere.

EXAMINATION

BY MR. SISKIN:

Q Mr. Wolin, what company are you associated with presently?

A Pop's Bagels Incorporated.

Q Were you associated with that company in 1965 or '66, '67 or '68?

A Yes.

Q What was your association with the company, what was your title?

A I am the president.

Q Are you one of the owners of the corporation?

A Yes.

Q Now, did there come a time when the National Labor Relations Board was involved with a proceeding, in a proceeding with your company which eventually resulted in the termination because there was a lockout?

A Yes.

Q Do you recall the circumstances surrounding your reinstatement of any employees pursuant to any court decision?

A In February of 1968 the union sent men in to work for me and they were to say the least, incompetent. They never sent back the regular men because there wasn't enough work for them. They wouldn't work for that small amount of work.

Q Did you call the union to ask them to send some men back to you at that time?

A I called them every day to change the men.

JUDGE ROSE: Off the record.

(Discussion off the record.)

JUDGE ROSE: On the record.

BY MR. APPELL:

Q Mr. Wolin, did Mr. Laskowitz ever tell you that he felt the men weren't properly being reinstated in your shop or in any other shop in the council?

A In what way?

Q Well, did he ever say that he felt the men aren't being given the right amount of work?

A They had overwork.

Q I am asking you whether Mr. Laskowitz said this?

A No, not to my knowledge.

But he couldn't say that to me because they had all the work.

Q Did he ever tell you that other council members were not properly reinstating the workers?

A Not to me, no.

Q He never told you that?

A We weren't that close that he would even discuss it with me.

MR. APPELL: No further questions.

MR. SISKIN: No further questions, your Honor.

BY JUDGE ROSE:

Q In 1967 did you do some of the work yourself baking

bagels?

A Yes.

Q Who else worked?

A I had one other man and my father-in-law, may he rest in peace.

Q So there were three of your doing the work?

A Actually my father used to play around at it, he was an old time bagel baker and I had to put him in the Bahamas or he would kill me. But we didn't have that much work.

Q It was basically the two of you?

A Yes.

Q How much work did you have in 1967, approximately?

A I would say we were making about 27, 28, 30 boxes a day.

Q And weekends?

A About 175 boxes, 200 boxes.

Q So you were baking in the range of four or 500 a week?

A No, in the range of 650 to 700 a week. The weekend consist of three days.

Q So throughout 1967 --

A Yes, we were running between 6 and 700 boxes a week.

Q You were selling these mostly retail, is that correct?

A 99 and 9/10ths percent retail.

the stipulation that each of you sign receipts to give to the Court Reporter for any exhibits that you take out of his possession because once the hearing closes he is responsible for the exhibits.

Anything further?

MR. APPELL: I would like to thank your Honor for myself and opposing counsel I am sure joins in that, for your guidance in this hearing.

JUDGE ROSE: Gentlemen it has been a pleasure and it's been a long and arduous hearing but we finally got finished.

After the briefs come in then the case will be considered to be submitted, I will then undertake to make a decision which will be in writing. I will file my decision with the Board and at the same time mail copies to the attorneys of record.

If you don't like what I decide, why you know what to do from there.

If there is nothing further, the hearing is now closed.

(Hearing closed at 2:08 P.M.)

oOo

Q How much were you getting for a bagel retail?

A I believe it was 84 cents.

Q Per dozen?

A Yes.

Q Or 7 cents a piece?

A Yes, but we gave 13 to the dozen. Yes, a baker's dozen.

Q If you sold them one at a time you would sell them for 7 cents?

A Yes.

JUDGE ROSE: Anything else of this witness?

MR. APPELL: Yes.

JUDGE ROSE: Okay.

EXAMINATION

BY MR. APPELL:

Q Did your father-in-law do any baking when the men returned from the lockout in '68?

A No way. You mean at the oven?

Q Yes.

A No.

Q Did you have another partner besides yourself and your father, was there another partner?

A No, I have no partners.

MR. APPELL: No further questions.

MR. SISKIN: No further questions.

AFFIDAVIT OF SERVICE BY MAIL

STATE OF NEW YORK,
COUNTY OF NEW YORK, *ss.*:

Joseph Boselli , being duly sworn, deposes and says, that on the 18thday of February, 1977 , at o'clock M. he served the annexed Joint Supplemental Appendix, in the matter of Bagel Baker Council of Greater New York, et al. vs N.L.R.B.

upon John C. Truesdale, Esq., Executive Secretary of N.L.R.B., Elliott Moore, Esq, and Andrew F. Tranovich, Esq. Esq(s)., Attorney(s)

for Respondent (Petitioner) National Labor Relations Board

by depositing 1 true copies properly enclosed in a securely sealed wrapper, post paid, thereof in a Post Office Box regularly maintained by the Government of the United States and under the care of the Postmaster of the City of New York at Village Station, New York, N. Y. 10014, enclosed in a securely closed wrapper with the postage thereon prepaid, addressed to said attorney(s) at (his/their) office 1717 Pennsylvania Avenue N.W. Washington, D.C. 20570. The said address was designated by them in preceding papers in this proceeding.

that being the address designated in the last papers served herein by the said attorney.

Joseph Boselli

Sworn to before me this 18

day of February 19 77

John Alusick

JOHN ALUSICK
Notary Public, S... New York
No. 31-...-53
Qualified in ... County
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